

**REPORT IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE  
REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC  
PROTECTOR ACT 23 OF 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

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**INVESTIGATION INTO ALLEGATIONS OF IRREGULAR APPOINTMENT OF THE  
EXECUTIVE MANAGER: COMPLAINTS AND INVESTIGATION IN THE OFFICE  
OF THE OMBUDSMAN FOR THE CITY OF JOHANNESBURG**

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**LIST OF ACRONYMS AND ABBREVIATIONS**

<b>ACRONYMS/ ABBREVIATIONS</b>	<b>DESCRIPTIONS</b>
Adv	Advocate
AM	African Male
CoJ	City of Johannesburg Metropolitan Municipality
City Parks	Johannesburg City Parks and Zoo
Constitution	Constitution of the Republic of South Africa, 1996
CV	Curriculum Vitae
EET	Employment Equity Targets
EM	Executive Manager
FPB	Film and Publication Board
GFIS	Group Forensic Investigation Services
GCSS	Group Corporate Shared Services
HRD	Human Resources Department
Ombudsman	Ombudsman for the City of Johannesburg
Public Protector Act	Public Protector Act, 1994
Public Protector Rules	Rules Relating to Investigations by The Public Protector and Matters Incidental Thereto, 2018 as amended
PWD	Person With Disabilities
The Policy	City of Johannesburg Metropolitan Municipality Group Talent Acquisition Policy Framework
WF	White Female
WM	White Male

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## EXECUTIVE SUMMARY

- (i) 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 (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, 1994 (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 irregular appointment of the Executive Manager: Complaints and Investigations in the Office of the Ombudsman for the City of Johannesburg Metropolitan Municipality.
  
- (iii) The complaint originates from a complaint lodged with the Public Protector by an anonymous Complainant (the Complainant) through Corruption Watch Johannesburg on 15 April 2024, in terms of section 6(1) of the Public Protector Act. The Complainant alleged, *inter alia*, that:
  - (a) The Ombudsman for the City of Johannesburg (the Ombudsman) irregularly appointed the Executive Manager: Complaints and Investigation without following proper recruitment processes; and
  - (b) The appointed candidate scored the lowest compared to other candidates who were interviewed. The Ombudsman took a decision to appoint the candidate without involving and/or consulting panel members.
  
- (iv) Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

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- (a) Whether the Executive Manager: Complaints and Investigation was irregularly appointed by the Ombudsman for the City of Johannesburg, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, 1994.
- (v) The investigation was conducted in terms of section 182(1) of the Constitution of the Republic of South Africa, 1996 and section 6(4) of the Public Protector Act, 1994 (Public Protector Act). It included an analysis of all relevant documents and the application of relevant laws and related prescripts.
- (vi) On 12 March 2025, the Investigation Team issued a Rule 41(1) notice in terms of the Public Protector Rules to the Complainant to inform him/her about the preliminary outcomes of the investigation and likely findings as well as to invite comments. On 26 March 2025, the Public Protector sent a reminder to the Complainant to reply to the Rule 41(1) Notice. No response was received from the Complainant.
- (vii) Having regard to the evidence and regulatory framework determining the standard that should have been complied with, the following findings are made:
- (a) **Whether the Executive Manager: Complaints and Investigation by the Ombudsman for the City of Johannesburg was irregularly appointed, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, 1994.**
- (aa) The allegation that the Executive Manager: Complaints and Investigation by the City of Johannesburg Ombudsman was irregularly appointed, is **not substantiated**.

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- (bb) Evidence before the Public Protector reveals that the position of Executive Manager: Complaints and Investigations was advertised internally and externally on the CoJ's website on 07 July 2023 in compliance with section 8.2.1(a) of the Policy.
- (cc) Further evidence placed before the Public Protector indicates that the shortlisting process took place on 13 October 2023, followed by the interviews on 10 November 2023. The top three scoring candidates were then recommended by the interviewing panel and subsequently sent for psychometric and competency assessment by an external service provider on 27 November 2023.
- (dd) Evidence gathered indicates that Mr P Gregoriou (Mr Gregoriou) scored a total of 77.3% in the interview ratings in compliance with subsection 8.3.4 of the Policy and further attained a sound match from the competency assessment results. This declared him a favourable and competent candidate when compared to candidates F and G.
- (ee) The investigation also revealed that Mr Gregoriou also met the minimum threshold requirements for the post as stated in the advertisement, by way of academic qualifications and work experience as evidenced by his CV.
- (ff) On 21 February 2024, Adv. S Gumede (Adv Gumede) exercised his delegated authority as the Line Manager and/or Head of Department responsible for the vacant position and appointed Mr Gregoriou to the position of Executive Manager: Complaints and Investigations, after considering both the interview scores and the outcome of the competency assessment in line with subsection 8.3.3 (e) of the Policy.
- (gg) GCSS confirmed that there was no need for the panel to reconvene after the interviews, as contemplated in subsection 8.3.5 of the Policy, as the outcome of the competency assessment was the deciding factor.

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- (hh) Evidence also revealed that the recruitment process took longer than the prescribed four (4) months to finalise, due to the unavailability of the panel members, and as a result Adv. Gumede required a special dispensation from the City Manager to finalise the recruitment process.
- (ii) Based on the above, the investigation could not establish any impropriety, procedural and/or process irregularity in the appointment of the Executive Manager: Complaints and Investigation by the Ombudsman.
- (jj) Accordingly, the Public Protector concludes that the conduct of the Ombudsman in the circumstances does not constitute 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, 1994.

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## 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 section 8(1) of the Public Protector Act, 1994 (the 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), which empower 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 Anonymous (the Complainant),
- 1.2.2 Mr Tshepo Makola, the Acting City Manager of the City of Johannesburg Metropolitan Municipality,
- 1.2.3 Advocate Siduduzo Gumede (Adv. Gumede) the Ombudsman for the City of Johannesburg, and
- 1.2.4 Mr Dada Morero, the Executive Mayor of the City of Johannesburg Metropolitan Municipality.
- 1.3 The matter concerns an investigation in connection with allegations of irregular appointment of the Executive Manager: Complaints and Investigations in the Office of the Ombudsman for the City of Johannesburg Metropolitan Municipality.



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## 2. THE COMPLAINT

2.1 The investigation originates from a complaint lodged with the Public Protector by an Anonymous Complainant through Corruption Watch Johannesburg on 15 April 2024, in terms of section 6(1) of the Public Protector Act.

2.2 The Complainant alleged, *inter alia*, that:

2.2.1 The Ombudsman for the City of Johannesburg (the Ombudsman) irregularly appointed the Executive Manager: Complaints and Investigation without following proper recruitment processes; and

2.2.2 The appointed candidate scored the lowest compared to other candidates who were interviewed. The Ombudsman took a decision to appoint the candidate without involving and/or consulting panel members.

## 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”.*

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- 3.3 Section 182(2) directs that the Public Protector has the additional powers and functions prescribed by national legislation. The Public Protector's powers are regulated and amplified by the Public Protector Act which state, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.
- 3.4 The Office of the Ombudsman is an office established within the City of Johannesburg Metropolitan Municipality (CoJ), however, separate and independent from the CoJ administration.<sup>1</sup>
- 3.5 The CoJ is an organ of state in terms of section 239 of the Constitution and a municipal entity contemplated in Chapter 1 of the Municipal System Act of 2000, 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 Executive Manager: Complaints and Investigation was irregularly appointed by the Ombudsman for the City of Johannesburg, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, 1994.

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<sup>1</sup> Clause 2(1), Chapter 2 of the Ombudsman By-Law – 2023.

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## **5. INVESTIGATION**

### **5.1 Methodology**

5.1.1 The investigation is conducted in accordance with section 182(1)(a) 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 investigate with due regard to the circumstances of each case.

### **5.2 Approach to the investigation**

5.2.1 The approach to the investigation included an exchange of documents and information with the Complainant, Office of the City Manager for the CoJ, interviews with the officials of the CoJ and the Ombudsman, 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:

5.2.2.1 What happened?

5.2.2.2 What should have happened?

5.2.2.3 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?

5.2.2.4 In the event of a violation, what corrective 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 what happened based on a balance of probabilities. In this case, the factual enquiry principally focused on

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whether the appointment of the Executive Manager: Complaints and Investigations by the Ombudsman was irregular.

### 5.3 **The Investigation Process**

5.3.1 The approach to the investigation included meetings and exchange of documentation between the Public Protector South Africa and the CoJ.

### 5.4 **Key sources of information**

#### 5.4.1 **Correspondence exchanged**

5.4.1.1 Complaint received by the Public Protector from the Complainant, dated 15 April 2024;

5.4.1.2 Allegation letter from the Public Protector to the former City Manager of the CoJ, Mr Floyd Brink (Mr Brink), dated 23 April 2024;

5.4.1.3 A response letter from Mr Mshiwa Sibande: Director: Operations Group Forensic and Investigation Services of CoJ (Mr Sibande) and supporting documentary evidence/annexures to the Public Protector, dated 10 May 2023;

5.4.1.4 Letter from the Public Protector to Mr Brink requesting interviews with officials of the CoJ who were involved in the appointment of the Executive Manager: Complaints and Investigations, dated 05 August 2024;

5.4.1.5 Email from Ms Candy Jaftha of CoJ Legal Services (Ms Jaftha) to the Public Protector confirming receipt of the request for interviews with CoJ officials involved in the recruitment process, dated 05 August 2024;

5.4.1.6 Letter from the Public Protector to Mr Brink requesting further information, dated 26 August 2024 and

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- 5.4.1.7 Response letter from the CoJ received by email from Ms Jaftha to the Public Protector, furnishing requested further information and annexures, dated 06 September 2024.
- 5.4.1.8 Response letter from the CoJ signed by Ms Jones received by email from Ms Jaftha to the Public Protector, furnishing requested further information, dated 20 September 2024.
- 5.4.2 **Documents received**
- 5.4.2.1 Advertisement for the position of Executive Manager: Complaints and Investigations, dated 07 July 2023, received from Mr Sibande;
- 5.4.2.2 Curriculum Vitae of Mr Gregoriou attached in his application for the position of Executive Manager: Complaints and Investigations, received from Mr Sibande;
- 5.4.2.3 Statement from panel member, Mr Segala Malahlela, dated 10 May 2024; received from Ms Jaftha;
- 5.4.2.4 Statement from panel member, Mr Thanduxolo Mendrew, undated; received from Ms Jaftha;
- 5.4.2.5 Statement from Adv. Gumede, the Ombudsman for CoJ, undated, received from Ms Jaftha;
- 5.4.2.6 Memorandum seeking special dispensation to complete the recruitment process beyond 31 December 2023, dated 15 February 2024 received by email from CoJ Ombudsman Human Resource Manager, Mr Humphrey Mphahlele (Mr Mphahlele);
- 5.4.2.7 Report on the appointment of the Executive Manager: Complaints and Investigation, dated 20 May 2024, received from Mr Mphahlele and

5.4.2.8 Report from Assessment Toolbox, explaining the outcomes of the psychometric and competency assessment, dated 04 September 2024, received from Ms Jaftha.

#### 5.4.3 **Interviews conducted by the Public Protector with CoJ**

5.4.3.1 Interview held with Mr Mphahlele on 22 August 2024;

5.4.3.2 Interview held with the CoJ's Employment Equity Official, Mr Muzikayifani Dhlomo on 22 August 2024; and

5.4.3.3 Interview held with the CoJ Ombudsman, Adv Gumede on 23 August 2024.

#### 5.4.4 **Audio Recording**

5.4.4.1 Audio recording furnished to the Public Protector by Mr Mphahlele containing the Panel's deliberations held at the conclusion of the interviews on 10 November 2023, received on 30 August 2024.

#### 5.4.5 **Legislation and other prescripts**

5.4.5.1 Constitution of the Republic of South Africa, 1996 (the Constitution);

5.4.5.2 Public Protector Act, 1994;

5.4.5.3 City of Johannesburg Metropolitan Municipality Group Talent Acquisition Policy Framework, effective from 01 October 2014.

#### 5.4.6 **Case Law**

5.4.6.1 *Mbulelo Allan Ruda vs City of Johannesburg and Others and*

5.4.6.2 *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others.*

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

5.4.7.1 A Notice in terms Rule 41(1) Notice of the Public Protector Rules, dated 12 March 2025, was issued to the Complainant on an instant date.

6. **THE 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 Executive Manager: Complaints and Investigation was irregularly appointed by the Ombudsman for the City of Johannesburg, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, 1994**

*Common cause*

6.1.1 The position of Executive Manager: Complaints and Investigations was advertised on the CoJ's vacant positions platform on 07 July 2023. The position was open to employees of the CoJ as well as external candidates, on the CoJ's website, as per circular 043/2023, with the closing date stated as 20 July 2023.

6.1.2 The advertisement stated the following minimum requirements:

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- a) *“A B-Degree / NQF level 7 in Law, preferably an LLB or LLM, Postgraduate in Law;*
  - b) *10 years of experience in an ombuds-ing environment and 5 years’ experience at middle/senior management with some level of strategic influence in a large enterprise or local government or sphere of equivalent or similar orientation; (sic)*
  - c) *Proven track record of keeping abreast of the changing legislative environment affecting Local Government;*
  - d) *Excellent legal research and report writing skills, knowledge of contract law, local government By-Laws, general management expertise and the ability to lead one’s professional peers;*
  - e) *In-depth knowledge of the issues affecting residents and communities broadly in relation to service delivery;*
  - f) *A proven ability to effectively manage an office of an executive In a complex and demanding environment whilst providing guidance to direct reports and administrative and support staff. (sic)*
  - g) *Demonstrated expertise in complaint management using mediation and conciliation techniques”. (sic)*

6.1.3 On 21 February 2024, Adv. Gumede appointed Mr Pandelis Gregoriou (Mr Gregoriou) to the position of Executive Manager: Complaints and Investigations.

*Issue in dispute*

6.1.4 The issue for the Public Protector’s determination is whether the Ombudsman irregularly appointed a candidate who scored lower during



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the interview process compared to other interviewed candidates, without involving and consulting the panel members.

*Complainant's version*

6.1.5 The Complainant stated that Adv. Gumede irregularly appointed the Executive Manager: Complaints and Investigations without following proper recruitment processes, in that the appointed candidate scored lower compared to other interviewed candidates; and

6.1.6 Adv. Gumede decided to appoint the candidate without involving and consulting with the rest of the panel members.

*CoJ's version*

6.1.7 On 23 April 2024, the Public Protector sent an allegations letter to the former City Manager for the CoJ, Mr Floyd Brink (Mr Brink), raising the allegations as made by the Complainant.

6.1.8 A response was received on 10 May 2024, from Mr Mshiwa Sibande (Mr Sibanda), Director: Operations Group Forensic and Investigation Services (GFIS) wherein he stated *inter alia*, that:

6.1.8.1 The position of Executive Manager: Complaints and Investigations was advertised on the CoJ's vacancies platform on 07 July 2023. The position was open to CoJ employees as well as external candidates as advertised on the CoJ's website, Circular 047/2023;

6.1.8.2 The candidates were required to apply online through the link [www.joburg.org.za](http://www.joburg.org.za) on the Hub Spot system. The applications were retrieved from the Hub Spot system by the Human Resources Department (HRD) and a longlist of candidates was compiled. A screening process was conducted by HRD, and the logistical arrangements were made for the shortlisting process to take place;

- 6.1.8.3 The shortlisting panel members constituted of the following persons: Adv. Gumede, Chairperson; Mr Segala Malahlela, Acting Group Head: Group Legal and Contracts (Mr Malahlela); and Mr Thanduxolo Mendrew, Chief Executive Officer, Johannesburg Parks and Zoo (Mr Mendrew);
- 6.1.8.4 The shortlisting process took place on 13 October 2023, and as a result, eight (08) candidates were shortlisted to proceed to the interviewing stage.
- 6.1.8.5 The interviews took place on 10 November 2023, and candidates scored as indicated below:

*Table 1: Interview scores for shortlisted candidates*

No.	Candidate	Score	Overall ranking
1.	Mr Pandelis Gregoriou	58	3
2.	Candidate A	51	4
3.	Candidate B	50	5
4.	Candidate C	46	6
5.	Candidate D	46	6
6.	Candidate E	34	7
7.	Candidate F	61	2
8.	Candidate G	70	1

- 6.1.8.6 The panel deliberated at the end of the interviews and resolved that the three (3) candidates (two internal and one external) who scored the highest be recommended for psychometric and competency assessments by an external service provider;

- 6.1.8.7 The two internal candidates expressed unhappiness with the assessment part relating to financial management. As a result, the two internal candidates requested Adv. Gumede to intervene;
- 6.1.8.8 Adv. Gumede intervened and was informed by Group Corporate and Shared Services (GCSS) that the vacant position required a satisfactory level of understanding and fluency in issues of financial management;
- 6.1.8.9 The practice in the CoJ was that the appointment of a successful candidate is based on the panel interview as well as on the psychometric and competency assessments;
- 6.1.8.10 He further stated that Adv. Gumede advised GFIS that the scores obtained in the interviews and the psychometric and competency assessment reports were used to decide which candidate should be appointed. In terms of the psychometric and competency assessment reports, the candidates obtained the following results:

*Table 2: Psychometric and Competency Assessment Outcomes*

No.	Candidate	Overall recommendation
1.	Candidate G	Marginal
2.	Candidate F	Marginal
3.	Pandelis Gregoriou	Sound

- 6.1.8.11 Adv. Gumede appointed Mr Gregoriou based on a favourable psychometric and competency assessment report. Adv. Gumede also took the decision to appoint Mr Gregoriou as the successful candidate without consulting with other members of the interview panel;
- 6.1.8.12 Adv. Gumede indicated that the recruitment process took longer than the prescribed four (4) months to finalise, due to the unavailability of the panel members, and as a result, Adv Gumede required a special dispensation from the Accounting Officer, namely the former City Manager, Mr Brink.

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- 6.1.8.13 Adv. Gumede contended that these were the reasons why he did not involve other panellists when considering the psychometric and competency assessment and Adv. Gumede made a unilateral decision to appoint Mr Gregoriou;
- 6.1.8.14 Mr Malahlela and Mr Mendrew confirmed that they were not involved beyond the interview stage and the consideration of the psychometric and competency assessment, and the resultant appointment was done by Adv. Gumede alone; and
- 6.1.8.15 On 21 February 2024 the appointment letter, signed by Adv. Gumede was issued to Mr Gregoriou appointing him as the Executive Manager: Complaints and Investigation and the appointment was duly accepted by Mr Gregoriou on 29 February 2024.
- 6.1.9 *Mr Sibande also submitted the following documents to the Investigation Team:*
- Memorandum seeking special dispensation to complete the recruitment process beyond 31 December 2023*
- 6.1.9.1 A memorandum seeking a special dispensation was sent to Mr Brink to complete, amongst other things, the recruitment process of the Executive Manager: Complaints and Investigations beyond a period of six months in line with the Talent Acquisition Policy, 2014 (the Policy);
- 6.1.9.2 In terms of Clause 8.2.1 of the Policy, appointments must be made within four (4) months of the closing date of the advertisement or circular and can be extended for a further two months in justifiable and extenuating circumstances;
- 6.1.9.3 The memorandum cited inordinate delays in the recruitment process due to external dependencies such as vetting and employment equity concerns; and

6.1.9.4 On 15 February 2024 Mr Brink approved the recruitment process of the Executive Manager: Complaints and Investigations beyond a period six months, which had lapsed on 20 January 2024.

*Report on the appointment of the Executive Manager: Complaints and Investigation HRD: reference number 047/2023*

6.1.9.5 Attached to the response of Mr Sibande was a report on the appointment of the Executive Manager: Complaints and Investigation, drafted and signed by Mr Humphrey Mphahlele (Mr Mphahlele): Human Resource Manager in the office of the Ombudsman on 20 May 2024. Mr Nombulelo Nikiwe (Mr Nikiwe), Executive Manager: Management Support in the office of the Ombudsman, supported the submission on even date;

6.1.9.6 The report outlined the HRD processes followed to fill the position of Executive Manager: Complaints and Investigation. In his report, Mr Mphahlele stated *inter alia*, that:

6.1.9.7 The vacant position of one (1) Executive Manager: Complaints and Investigations was advertised/circularised on 7 July 2023 with a closing date of 20 July 2023 in the vacancy circular: Number 047/2023;

6.1.9.8 A total of one hundred and seventy-six (176) applications were received through the approved CoJ online platform. Out of the 176 applications received, there were one hundred and eleven (111) male and sixty-five (65) female applicants;

6.1.9.9 The above recruitment process was in line with section 8.2.1 of the Policy and the Municipal Staff Regulations;

6.1.9.10 Section 8.3.3(a) of the Policy states that the shortlisting panel should consist of at least three (3) panel members of which one (1) must be the line manager of the position. The shortlisting panel consisted of the following:

Table 3: The shortlisting panel

Serial No.	Name of Official	Designation
1.	Adv. Siduduzo Gumede	Ombudsman for CoJ (Line Manager of the position)
2.	Mr Segala Malahlela	Group Head: Legal & Contracts
3.	Mr Thandoxulu Mendrew	Managing Director: Johannesburg City Parks
4.	Ms Sinyane Nxumalo	Group Head: Group Risk Assurance Services
5.	Mr Humphrey Mphahlele	Manager: Talent Acquisition
6.	Mr Muzikayifani Dhlomo	Employment Equity Representative
7.	Ms Tinyiko Mokgoadi	Union Representative (IMATU)
8.	Mr Lebogang Msimango	Union Representative (SAMWU)
9.	Mr Tshedza Moshapo	HRD Administration Assistant

6.1.9.11 Ms Sinaye Nxumalo could not be part of the interview panel as she was no longer employed by CoJ at the time of the interviews. Her non-availability did not prejudice the process as the panel could continue with the remaining members;

6.1.9.12 A formal physical shortlisting meeting was held on 13 October 2023. The panel went through the applications using the job specification that was advertised as a guideline for creating a shortlist of suitably qualified candidates to be interviewed;

6.1.9.13 After deliberations, nine (9) candidates were shortlisted to be interviewed. The shortlisting process was in line with the Employment Equity Targets (EET) which were African Males (AM), White Males (WM), African Females (AM), White Females (WF) and Persons with Disabilities;

6.1.9.14 The panel discussed the possible questions prior to the start of the interviews and agreed on five (5) final questions. The candidates were

interviewed physically on 10 November 2023 at 66 Jorissen Place Braamfontein 9<sup>th</sup> Floor Boardroom. Eight (8) of the invited candidates (as already shown above) attended the interviews and one candidate declined the invitation for the interview;

6.1.9.15 The table below outlines the final scoring by each panel member, average scores and ranking of the candidates approved at the end of the interview:

*Table 4: Scoring by panel members:*

No.	Name of Applicant	Siduduzo Gumede	Segala Malahlela	Thandoxolo Mendrew	Total Interview scores	Average % scores	Overall ranking
1.	Candidate G	23	24	23	70	93.3	1
2.	Candidate F	25	20	16	61	81.3	2
3.	Pandelis Gregoriou	24	18	16	58	77.3	3
4.	Candidate A	23	15	13	51	68	4
5.	Candidate B	25	16	9	51	66.6	5
6.	Candidate D	14	18	14	46	61.3	6
7.	Candidate C	18	14	14	46	61.3	6
8.	Candidate E	10	16	8	34	45.3	7

6.1.9.16 Based on the interview results in Table 4 above, the panel members recommended that the following three (03) candidates be sent for psychometric and competency assessment in line with the Policy namely, section 7 (q-s) as they obtained a score of 75% and above:

- (a) Candidate G
- (b) Candidate F
- (c) Pandelis Gregoriou;

6.1.9.17 The psychometric and competency results were finalised by the service provider and forwarded to the Ombudsman's Talent Management Unit.

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The results indicated the performance of the first two (02) candidates (Candidate G and Candidate F) as a marginal match and for the third candidate (Mr Gregoriou) as a sound match;

- 6.1.9.18 The psychometric and competency assessment results were shared with Adv. Gumede as the chairperson of the panel. In terms of the psychometric and competency assessment outcome, all three (3) candidates were eligible for appointment. It would therefore be at the discretion of the panel to determine the preferred candidate;
- 6.1.9.19 Adv. Gumede subsequently communicated to the Talent Management Unit in his office that the preferred candidate is Mr Gregoriou - the candidate who scored third highest at the interviews; and
- 6.1.9.20 The Talent Management Unit in the Office of the CoJ Ombudsman proceeded to draft a Motivation to Appoint Report in line with Adv. Gumede's recommendation. The report was forwarded to Adv. Gumede for consideration and once he had approved, it was circulated to the Employment Equity Department and Talent Acquisition and Transformation, Performance Management and Transformation.

*Statements by Members of the Panel*

- 6.1.10 On 05 August 2024, the Public Protector requested written submissions from the CoJ officials that served on the Recruitment and Selection Panel for the position of Executive Manager: Complaints and Investigation in the CoJ Ombudsman office, indicating their role as panel members, to elaborate on the discussions surrounding the interview process of the top three candidates. Responses were received from the following members of the panel:

*Statement of Mr Thanduxolo Mendrew*



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- 6.1.10.1 The Public Protector has in its possession an undated but signed statement from Mr Mendrew. Mr Mendrew stated that:
- 6.1.10.2 On 21 August 2023, he was invited by the Ombudsman to participate as a member of the Recruitment Panel for the position of Executive Manager: Complaints and Investigations;
- 6.1.10.3 He was also part of the shortlisting panel for the said position. The shortlisting meeting took place on 18 October 2023. The interviews were held on 10 November 2023; and
- 6.1.10.4 During the interviews, the panel scored all the candidates and resolved that the top 3 candidates must be taken to the next stage of the recruitment process, which was to undergo psychometric assessments; and that was the last time he participated in the recruitment process.

*Statement by Mr Segala Malahlela*

- 6.1.10.5 The Public Protector is also in possession of a signed statement by Mr Malahlela, dated 10 May 2024. Mr Malahlela stated *inter alia* that:
- 6.1.10.6 On 21 August 2023, he was invited by the Ombudsman to participate as a member of the Recruitment Panel for the position of Executive Manager: Complaints and Investigations; and
- 6.1.10.7 The last time he participated in the recruitment process was during the interviews and he was not aware of the criteria used to appoint the final candidate or the name of the candidate.

*Statement by Adv. Gumede*

- 6.1.10.8 In his undated statement, Adv. Gumede stated the following:

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- 6.1.10.9 Since 2018 or thereabouts, the Office of the Ombudsman has not had an Executive Manager: Complaints and Investigations to assist the Ombudsman with the investigation of complaints. This role has been performed by two Senior Managers acting in the alternative;
- 6.1.10.10 Sometime in 2023, he took the decision to commence a recruitment process for two (02) Executive Management positions in the Office of the Ombudsman, namely, the position of Executive Manager: Management Support and the position of Executive Manager: Complaints and Investigations, respectively;
- 6.1.10.11 The position of Executive Manager: Complaints and Investigations is the pinnacle position as the engine room of complaints investigations in the operations of the Office of the Ombudsman.
- 6.1.10.12 The position requires extensive knowledge and experience of complaints investigations and handling with minimal support from the Ombudsman. As Ombudsman, the individual appointed to that position should be capable of discharging that responsibility confidently, independently, correctly and with the application of sound judgment;
- 6.1.10.13 The recruitment process for the position was conducted in line with the recruitment prescripts, procedures and policies applicable to local government and specifically the Policy Framework;
- 6.1.10.14 As the hiring manager, he chaired both the shortlisting and interview meetings. The three (3) recommended candidates were referred for psychometric assessment by an external service provider as is standard practice for positions of this seniority in the CoJ. This was also confirmed by the Head of GCSS and his Management Support Executive colleague;
- 6.1.10.15 The two (2) internal candidates from the Office of the Ombudsman, who have previously acted in the position were asked how they found the

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second phase of the recruitment process, namely, the psychometric assessment. They both expressed deep unhappiness with the financial management part of the assessment to the extent that they asked that he intercede on their behalf to GCSS on this score, which he did;

6.1.10.16 The Head of GCSS and his Management Support counterpart assured him that psychometric assessments were mandatory at the level of the position applied for and that candidates were expected to display a satisfactory level of understanding of and fluency in matters of financial management commensurate with the position. He communicated this to both internal candidates who expressed appreciation for his role in taking their concerns seriously;

6.1.10.17 The practice in the CoJ is to make the appointment based on at least two (2) assessments, namely, a panel interview and a psychometric assessment. As said, both were observed during the recruitment process in line with Policy and practice;

6.1.10.18 All the panel interview scores of the three candidates were tallied and analysed. The panel then referred the top three (3) candidates for psychometric assessments by an external service provider and received individual assessment reports of the three candidates. When deciding who to appoint, he considered both the recommendations of the interview panel as well as the reports and recommendations of the external service provider who did the psychometric and competency assessments;

6.1.10.19 As the recruiting manager he pondered again and again over the results of this recruitment process because he knew that the two internal candidates would be most devastated by the results. However, he was in no doubt satisfied that they had run a fair and transparent recruitment process. All candidates were afforded the opportunity to put their best foot forward, and the facts quite literally speak for themselves;

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- 6.1.10.20 He then instructed Mr Mphahlele to prepare an appointment report and the offer to the successful candidate;
- 6.1.10.21 The recruitment process took some time to finalise largely due to the unavailability of some of the members of the panel for meetings. He was advised that the normal recruitment process should conclude within four (4) months. This process took longer than that and even needed a special dispensation by the City Manager, because of the inordinate delays. He would sometimes be advised at the last minute that a panel member had suddenly become unavailable due to other pressing Council business. In that case they would have to re-schedule meetings to accommodate panel members and to maintain the requisite quorum for meetings; and
- 6.1.10.22 The appointment of the Executive Manager: Complaints and Investigations in the Ombudsman is regular and that, to the best of his knowledge, there was no impropriety in the recruitment and appointment process.

*Interviews conducted by the Public Protector*

- 6.1.10.23 On 05 August 2024 an interview request letter was sent to the Office of the City Manager for CoJ, requesting to meet with the officials who were involved in the appointment of the Executive Manager: Complaints and Investigations Ombudsman.

*Interview with the HR Manager: Mr Humphrey Mphahlele*

- 6.1.10.24 On 22 August 2024, the Investigation Team held a meeting with Mr Mphahlele to get a proper understanding of the recruitment process followed in the appointment of the Executive Manager: Complaints and Investigations in the office of the Ombudsman;
- 6.1.10.25 During the meeting Mr Mphahlele repeated the same submission as captured in the statement dated 20 May 2024, already provided to the

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Public Protector, save to add that there was some deliberation done by the selection panel after the end of the interview session and he subsequently provided the Public Protector with the audio record of the discussion.

*Interview with the Employment Equity Representative: Mr Muzikayifani Dhlomo*

6.1.10.26 On 22 August 2024, the Investigation Team held a meeting with the Employment Equity Representative, Mr Muzikayifani Dhlomo (Mr Dhlomo) and he stated *inter alia* that:

6.1.10.27 He was involved in the recruitment process as a neutral observer during the shortlisting stage to ensure equal treatment of all applicants regarding employment equity;

6.1.10.28 Mr Dhlomo stated that he did not pick up any discriminatory issues insofar as work experience and academic qualifications are concerned and based on what was stated in the advert.

*Interview with Ombudsman, Adv. Gumede*

6.1.10.29 On 23 August 2024, the Investigation Team held a meeting with Adv. Gumede to get further understanding of his role and the process followed in the appointment of the Executive Manager: Complaints and Investigations in the Office of Ombudsman.

6.1.10.30 During the meeting Adv. Gumede reiterated his submissions as contained in his statement provided to the Public Protector, dated 20 May 2024. He also indicated that there was some deliberation or discussions done by the interview panel after the end of the interview session, although it was not conclusive regarding the final candidate. He requested the Investigation Team to consider that audio record. Adv. Gumede denied knowing or being in contact with Mr Gregoriou prior to the recruitment process.

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*Request for further information to CoJ, dated 26 August 2024*

- 6.1.11 On 26 August 2024, a request for further information was sent to Mr Brink requesting further clarity from the Accounting Officer or from other delegated executive or senior official within CoJ's GCSS and Human Capital Management regarding the implications of the Policy and the psychometric assessment reports on this recruitment process.

*Response letter from CoJ, dated 06 September 2024*

- 6.1.12 On 06 September 2024, an additional response was received from the Office of the City Manager, signed off by the Acting Group Head: Human Capital Management, Ms Moogsy Jones (Ms Jones), stating the following:
- 6.1.12.1 The appointment recommendation report in the CoJ is prepared by the Human Resources official who provides secretarial support to the interview panel;
- 6.1.12.2 The interview scores and psychometric/competency assessment results at that level of the process give an indication of the most suitable candidate. In line with the Policy, any candidate who scores not less than the 75% threshold in an interview process, is appointable. Where a psychometric/competency assessment is required, both the interview scores and the psychometric/competency assessment results are simultaneously considered to determine the most suitably qualified candidate for appointment;
- 6.1.12.3 In this instance, the psychometric/competency assessment was essentially used to assess the suitability of the highest scoring candidate, as the weighting attached to the physical interview, rates higher than the assessment results. As long as the highest candidate's assessment proficiency is rated as "*competent*", the appointment can continue;

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- 6.1.12.4 The Head of Department responsible for the vacant position therefore exercised his discretion and delegation to conclude the process upon receipt of the assessment results, in execution of the panel's recommendation. This is an acceptable practice in the CoJ to streamline recruitment processes;
- 6.1.12.5 The interview scores of each panel member are enough to determine the most suitably qualified candidate. When the human resource official is drafting the appointment recommendation report after each interview process, interview scores of all the panel members are taken into consideration to decide on the most suitable candidate;
- 6.1.12.6 The interview scores of the candidates who met 75% and above, were sent for psychometric/competency assessment as they were all appointable at that stage. The next step was to wait for the psychometric/competency assessment results to determine whether the highest and second highest ranked candidates are deemed "*competent*";
- 6.1.12.7 There was no need indeed for the panel to reconvene. Even if the panel were to reconvene, they would have arrived at the same conclusion that it was procedurally fair to declare Mr Gregoriou as the most suitable candidate in terms of his ranking by the panel and also taking into consideration the assessment outcome, which deemed him '*competent*' for the role in question;
- 6.1.12.8 It is their considered view that given the prevailing practice and discretion extended to the Head of Department responsible for the vacant position to streamline recruitment and selection processes, this was procedurally fair, transparent and was without any process irregularities;
- 6.1.12.9 There was full procedural and substantive compliance with the above-mentioned. If not, the appointment recommendation report would not have been signed off by the central Talent Acquisition and Employment Equity

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Unit. All the signatures in the appointment recommendation report of CoJ are meant to ensure fairness, transparency, equity and substantive compliance with applicable policies and procedures.

*Letter from Service Provider, dated 04 September 2024 explaining the outcomes of the psychometric and competency assessment*

- 6.1.13 The Service Provider, *Assessment Toolbox*, who conducted the psychometric assessment, submitted a letter dated 04 September 2024 signed by Ms/Mr Deepa Lalla, Senior Psychometrist, to the Investigation Team. The following was stated:
- 6.1.13.1 Assessment Toolbox has seventeen (17) years of experience and focuses on the delivery of various talent management solutions to assist organizations drive performance, including psychometric assessments, competency-based simulation exercises and Human Resource Consulting services;
- 6.1.13.2 The assessments conducted with the candidates being considered for the Executive Manager: Complaints and Investigations position included a combination of psychometric assessments and simulation exercises. The aim of the assessment was to measure the candidate's reasoning ability, behavioural tendencies, personal characteristics and preferences and not the technical skills, knowledge and experience required for the role which are generally covered in the interview and reference checks;
- 6.1.13.3 Through reliance on extensive experience in the recommendation of assessment batteries, Assessment Toolbox proposed an assessment battery that consisted of psychometric assessments which focused on understanding the candidate's cognitive capacity, reasoning skills, and personality preferences as well as a simulation exercise, focused on understanding the candidate's demonstrated behaviours in certain competency areas as outlined in the report.



- 6.1.13.4 This recommendation was made based on the budget for the assessments as well as the requirements of the role as identified from the job description. These results were then evaluated against various competencies, aligned to the job description and nature of the role, such as strategic thinking, problem-solving, resilience, leadership and people management to name a few;
- 6.1.13.5 The outcomes of the assessments were provided after extensive evaluation of the candidate's assessment results by qualified and experienced registered professionals at Assessment Toolbox. This process was further supported by a Quality Assurance process where each candidate's report was quality assured to ensure standardisation and fairness. According to their rating scale and based on the assessment results, a candidate can be awarded one of the following recommendations:
- (a) **Poor** - Displays few or none of the behaviours typical of the competency and will require significant development;
  - (b) **Marginal**- Displays some of the behaviours typical of the competency and will require some development;
  - (c) **Sound**- Displays most of the behaviours typical of the competency and will require minor development; and
  - (d) **Outstanding**- Displays all or nearly all the behaviours typical of the competency.
- 6.1.13.6 It is important to note that the recommendations were based solely on the candidate's assessment results with the purpose to provide inputs to assist the CoJ with selection decisions, but excludes additional information such as criminal checks, technical skills checks, reference checks and credit checks, that should be taken into account by the CoJ during their recruitment processes;

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- 6.1.13.7 The difference between marginal and sound is associated with the candidate's suitability to the role, based on the assessment results, and the amount of development that will be required for the candidate to reach the required level of functioning from a behavioural and competency perspective. While sound match suggests that a candidate can hit the ground running with minimal development or support, marginal match suggests that there are areas that require development or a more specific intervention to enable them to perform effectively within the role. Interventions can include, but are not limited to coaching, performance management, training, or mentoring;
- 6.1.13.8 A candidate cannot pass or fail a psychometric or simulation assessment. The purpose is to provide the CoJ with information pertaining to the candidate's behaviours, skills and characteristics and then incorporate this information with various other information gathered during the recruitment process to help make an informed decision;
- 6.1.13.9 The assessment cannot be used in isolation and the responsibility remains with the CoJ to use the report correctly and with due diligence pertaining to additional information to make a final decision during the recruitment process and who should be appointed. This information is clearly indicated on all Assessment Toolbox's outgoing reports, and it offers feedback to selection panels on request to clarify any uncertainties regarding the assessment results; and
- 6.1.13.10 The difference between marginal and sound, as discussed above, signifies the candidate's suitability to the role and competencies being measured and the amount of development a candidate would require should they be successful at the end of the recruitment process.

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*Summary of the panel's deliberations done at the end of the interview on 10 November 2023*

- 6.1.14 On 30 August 2024, Mr Mphahlele furnished the Investigation Team with the audio recording of the panel's deliberations held at the conclusion of the interviews on 10 November 2023. According to the discussions, the panel members agreed that the three (3) top candidates who scored above the minimum threshold of 75% should proceed to the next selection phase, which is psychometric and competency assessment; and
- 6.1.15 The panel's discussion further revealed that the members were unanimous on the point that the outcome of the psychometric and competency assessment will have a bearing on the appointment of the final candidate.

*Mr Gregoriou's Curriculum Vitae*

- 6.1.15.1 According to his CV, Mr Gregoriou has the following qualifications:
- (a) Accredited Mediator with Conflict Dynamics Johannesburg, obtained in 2015;
  - (b) Certificate in Banking Law and Financial Markets, University of Witwatersrand, obtained in 2010;
  - (c) Bachelor of Laws (LLB), University of Witwatersrand, obtained in 2003;
  - (d) Bachelor of Arts, University of Witwatersrand, obtained in 2000; and
  - (e) Matric, Parktown Boys' High school in 1995.
- 6.1.15.2 Mr Gregoriou's CV reveals that he has the following work experience:
- (a) Manager: Regulatory Compliance and Enforcement at Film and Publication Board (FPB), from 2018 to 2023;
  - (b) Head of Legal Services Unit at the South African Human Rights Commission (SAHRC), from 2012 to 2018;

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- (c) Head of the Commissioners Programme at the SAHRC from 2010 to 2012; and
  - (d) Legal Officer to the Commissioner at the SAHRC from 2006 to 2010.

**Notice issued in terms of Rule 41(1) of the Public Protector Rules, as amended**

- 6.1.15.3 On 12 March 2025, the Public Protector issued a Rule 41(1) notice in terms of the Public Protector Rules to the Complainant to inform him/her about the preliminary outcomes to the investigation and likely findings as well as to invite comments. On 26 March 2025 the Public Protector sent a reminder to the Complainant to reply to the Rule 41(1) Notice.
- 6.1.15.4 The Complainant did not respond to the Notice.

*Applicable Law*

**Constitution of the Republic of South Africa, 1996 (the Constitution)**

- 6.1.16 Section 2 of the Constitution states that the Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.
- 6.1.17 Section 195(1) of the Constitution provides amongst other things that public administration must be governed by the democratic values and principles enshrined in the Constitution, including promoting and maintaining a *high standard of professional ethics, accountability and transparency*

**CoJ's Group Talent Acquisition Policy Framework**

- 6.1.18 Section 7 of the Policy Framework titled: "*Policy Provisions*", states the following:

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- (a) *All aspects of the Recruitment and Selection Process will be professional, fair, objective, transparent and non-discriminatory.*
- (b) *The Recruitment and Selection Process will be holistic and integrated with other Human Resources Management Processes. COJ Group is committed to Recruitment Strategies that will attract and retain a diverse selection of qualified internal and external applicants.*
- (c) *The process affords an applicant an equal opportunity to compete for vacant positions, except as provided in this Policy with reference to affirmative action and employment equity. The process will be part of the CoJ Group Strategy to meet employment equity targets, enabling a representative and competent workforce.*
- (d) *When considering whether a person may be suitably qualified for a position, the following criteria will apply. Any one or any combination of an applicant's:*
- ✓ *Formal qualifications;*
  - ✓ *Recognition of prior learning*
  - ✓ *Relevant experience, and/or*
  - ✓ *If the applicant has the capacity to acquire, within a reasonable time, the ability, skills and competencies to fulfil the position requirements.*

6.1.19 Subsection 8.2.1, titled *Advertisements* states the following:

- (a) *The recruiting Department/ Manager must request the circularising/advertising of the vacant post as per the Guidelines on Circularising/Advertising Vacant Positions (Annexure B).*
- (b) *All adverts and/or circulars shall be in a standard format and Group Human Capital Management Centre of Excellence is responsible for*

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*maintaining and reviewing the format on an on-going basis to improve thereupon.*

- (c) Level s1-3 and below vacant posts shall be circularised within the service in such a manner. If thereafter, the Department is of the opinion that the vacant post may not be suitably filled from within the service; such position may then be advertised externally in addition to being circularised internally.*
- (d) Special targeted vacancies shall be published in the City's "Local Media" to attract targeted candidates in the area in line with the job inherit.*
- (e) Vacant posts on Level 3 and below may be considered for simultaneous advertising and circularising, subject to a detailed motivation, signed by the respective Group Head: GHCM or his nominee, for consideration and approval.*

6.1.20 Subsection 8.3.3 titled *Interviews and Assessments* states the following:

- (a) At least three (3) people should form part of the Interview Panel. It should consist of the Line Manager, HR Practitioner and one other Manager from another Department. A "specialist" may be required to form part of the Panel depending on the technical part of the inherent job. GCM will facilitate the logistical arrangements related hereto and contacting of the relevant parties and candidates. It is crucial and imperative that in all interviews HR Practitioners be involved and participate fully and that no interview will proceed without them.*

6.1.21 Subsection 8.3.4 titled *Finalisation and Recommendations* states the following:

- (a) When all the candidates on the shortlist have been interviewed, unless for whatsoever reason one or some of them were unable to*

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*attend and this did not materially affect the quality of the process or the opportunity to meet EE targets, the interviewing Panel will deliberate and recommend a suitable candidate based on the scores of each candidate in the interview/s and assessments (if appropriate).*

- (b) *The Panel should also finalise a second recommended candidate, provided such a candidate attained on aggregate 75% on the tests and interview questions ratings. In the event that the first candidate does not accept the offer.*

6.1.22 Subsection 8.3.5 titled *Reference Checks and Appointment* states the following:

- (a) *Once the interviews and assessments (where appropriate) have been finalised, the Panel will make a final written recommendation regarding the successful candidate and a second candidate in the event that the first candidate does not accept the offer.*
- (b) *Prior to finalising the Appointment Recommendation to the Head of HCM a reference check will be finalised by HR for the recommended candidate (see Annexure I – Guidelines When Conducting A Reference Check). The reference check will only be done for the second candidate should the first candidate not accept the offer.*

### **Case Law**

6.1.23 In *Mbulelo Allan Ruda vs City of Johannesburg and Others*,<sup>2</sup> the court held that the threshold requirements for the job had been met in the absence of any contention that the appointed candidate lacked the prescribed skills, expertise, competencies and academic qualifications.

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<sup>2</sup> *Mbulelo Allan Ruda vs City of Johannesburg and Others*, Case No: J1781/2017 at paragraphs 4, 8 and 9.

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- 6.1.24 The court further stated that as long as there is no challenge or dispute regarding the suitability of the candidate based on the threshold requirements for the job/post, it cannot be held that the employer acted irrationally by overlooking the highest scoring candidate and by appointing a candidate that did not score number one or even number two during the interview.
- 6.1.25 The Labour Court ruled that the process of interviewing, shortlisting and recommendation should be distinguished from the process of appointment. The former category is one designed to identify candidates who meet the relevant regulatory requirements and to rank them according to the assessments conducted by the selection panel.
- 6.1.26 According to the Labour Court, the process of appointment is one in which those charged with making the appointment may well introduce the criteria that were not reflected in the recruitment and selection process. The Labour Court further held that provided that the criteria meet the rationality test, it fails to appreciate how a preference expressed is reviewable.<sup>3</sup>

### *Analysis*

- 6.1.27 The evidence before the Public Protector indicates that the position of Executive Manager: Complaints and Investigations was advertised internally and externally on the CoJ's website in line with section 8.2.1(a) of the Policy. The position was open to employees of the CoJ as well as to external candidates as indicated in Circular 047/2023. Panel members were appointed in terms of section 8.3.3(a) of the Policy and consisted of the Ombudsman, who chaired the panel, HRD Manager in the Office of the Ombudsman, the Head of Group Legal and Contracts and the Chief Executive Officer, Johannesburg Parks and Zoo.

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<sup>3</sup> Mbulelo Allan Ruda vs City of Johannesburg and Others, Case No: J1781/2017 at paragraph 10.



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- 6.1.28 The evidence further reveals that shortlisting took place on 13 October 2023 and was followed by interviews of the eight shortlisted candidates on 10 November 2023. The highest scoring three candidates were recommended and subsequently sent for psychometric and competency assessment by an external service provider namely, Assessment Toolbox on 27 November 2023.
- 6.1.29 The evidence at the Public Protector's disposal indicates that the recruitment process took longer than the prescribed four (4) months to finalise, due to the unavailability of the panel members and as a result Adv. Gumede required a special dispensation from the Accounting Officer, namely the City Manager to finalise the recruitment process.
- 6.1.30 Subsection 8.3.3(e) of the Policy provides, amongst other things, that the best practice is that the selection does not occur based on interviews only, but by means of other assessments to determine skills, knowledge and competency potential. In this regard, the competency assessment was another criterion to be considered due to the seniority of the post of the Executive Manager: Complaints and Investigation.
- 6.1.31 Subsection 8.3.4 of the Policy indicates that the panel should recommend the suitable candidate based on the interview scores and assessments (if appropriate). This subsection further provides that the panel should recommend a candidate who attained an aggregate of at least 75% on the test and interview ratings.
- 6.1.32 In terms of the evidence before the Public Protector, Mr Gregoriou scored a total of 77.3 % in the interview and attained a sound match from the competency assessment, as evaluated by the external service provider, Assessment Toolbox. It is not in dispute that Mr Gregoriou met the threshold requirements for the post of Executive Manager: Complaints and Investigations as established by the advertisement.

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- 6.1.33 On 21 February 2024, Adv. Gumede appointed Mr Gregoriou to the position of Executive Manager: Complaints and Investigations, after considering both the interview scores and the outcome of the competency assessment.
- 6.1.34 Subsection 8.3.5 of the Policy states that once the interviews and assessments (where appropriate) have been finalised, the Panel will make a final written recommendation regarding the successful candidate and a second candidate in the event that the first candidate does not accept the offer.
- 6.1.35 In this instance, Adv. Gumede as the chairperson of the interview panel did not reconvene the panel to deliberate on the outcome of the competency assessment. Adv. Gumede stated that following the outcome of the competency assessment which declared Mr Gregoriou a sound match for the post, there was no need for the panel to reconvene.
- 6.1.36 Adv. Gumede further contended that even if the panel were to reconvene, they would have arrived at the same conclusion that it was procedurally fair to declare Mr Gregoriou as the most suitable candidate based on both the interview score and assessment outcome which deemed him competent for the role in question.
- 6.1.37 As the delegated Line Manager or Head of Department responsible for the vacant position, Adv. Gumede expressed a preference for Mr Gregoriou based on his combined results from the interview and assessment outcomes.
- 6.1.38 The Public Protector notes that the GCSS corroborated Adv. Gumede's version on the point that there was no need for the panel to reconvene after the interviews as contemplated in subsection 8.3.5 of the Policy, as the outcome of the competency basically decided on which candidate to appoint.

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- 6.1.39 The principle of legality requires that the exercise of all public power must be rational and in accordance with the purpose for which the power is given.<sup>4</sup>
- 6.1.40 In terms of overall evidence at the disposal of the Public Protector, there is no basis to find that the process followed in the appointment of the Executive Manager: Complaints and Investigation in the Office of the Ombudsman is tainted by impropriety. Mr Gregoriou possessed and met all the prescribed skills, expertise, competencies and qualifications for that position.
- 6.1.1 The Complainant was served with a Rule 41(1) Notice to afford him/her an opportunity to make representations regarding the intended closure of the matter, however, no response was received by the Public Protector, despite the reminder.

#### *Conclusion*

- 6.1.2 Based on all the factual evidence obtained, neither administrative irregularity nor impropriety could be established in the appointment of the Executive Manager: Complaints and Investigation in the office of the Ombudsman.
- 6.1.3 Accordingly, the Public Protector concludes that Mr Gregoriou is suitably qualified for the position of the Executive Manager: Complaints and Investigation in the Office of Ombudsman.
- 6.1.4 As a result, it can be concluded that there was substantive compliance with the Constitution as well as other applicable legal framework in the appointment process for the Executive Manager: Complaints and Investigation in the Office of Ombudsman.

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<sup>4</sup> Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others (CCT7/98) [1998] ZACC 17; 1999 (1) SA 374; 1998 (12) BCLR 1458 (14 October 1998) at para 56.

## 7. FINDINGS

Having regard to the evidence and regulatory framework determining the standard that should have been complied with, the following findings are made:

### 7.1 **Whether the Executive Manager: Complaints and Investigation by the Ombudsman for the City of Johannesburg was irregularly appointed, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, 1994.**

7.1.1 The allegation that the Executive Manager: Complaints and Investigation by the City of Johannesburg Ombudsman was irregularly appointed, is **not substantiated**.

7.1.2 Evidence before the Public Protector reveals that the position of Executive Manager: Complaints and Investigations was advertised internally and externally on the CoJ's website on 07 July 2023 in compliance with section 8.2.1.(a) of the Policy.

7.1.3 Further evidence placed before the Public Protector indicates that the shortlisting process took place on 13 October 2023, followed by the interviews on 10 November 2023. The top three scoring candidates were then recommended by the interviewing panel and subsequently sent for psychometric and competency assessment by an external service provider on 27 November 2023.

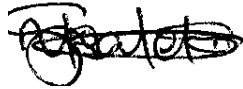
7.1.4 Evidence gathered indicates that Mr Gregoriou scored a total of 77.3% in the interview ratings in compliance with subsection 8.3.4 of the Policy and further attained a sound match from the competency assessment results.

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- This declared him a favourable and competent candidate when compared to candidates F and G.
- 7.1.5 The investigation also revealed that Mr Gregoriou also met the minimum threshold requirements for the post as stated in the advertisement, by way of academic qualifications and work experience as evidenced by his CV.
- 7.1.6 On 21 February 2024, Adv. Gumede exercised his delegated authority as the Line Manager and/or Head of Department responsible for the vacant position and appointed Mr Gregoriou to the position of Executive Manager: Complaints and Investigations, after considering both the interview scores and the outcome of the competency assessment in line with subsection 8.3.3 (e) of the Policy.
- 7.1.7 GCSS confirmed that there was no need for the panel to reconvene after the interviews, as contemplated in subsection 8.3.5 of the Policy, as the outcome of the competency assessment was the deciding factor.
- 7.1.8 Evidence also revealed that the recruitment process took longer than the prescribed four (04) months to finalise, due to the unavailability of the panel members, and as a result Adv. Gumede required a special dispensation from the City Manager to finalise the recruitment process.
- 7.1.9 Based on the above, the investigation could not establish any impropriety, procedural or process irregularity in the appointment of the Executive Manager: Complaints and Investigation by the Ombudsman.
- 7.1.10 Accordingly, the Public Protector concludes that the conduct of the Ombudsman in the circumstances does not constitute 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, 1994.

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## 8. CONCLUSION

- 8.1. The Public Protector considers this matter as finalised and cannot take it further.



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**ADV. KHOLEKA GCALEKA**  
**PUBLIC PROTECTOR**  
**REPUBLIC OF SOUTH AFRICA**  
**DATE: 31 MARCH 2025**

*Assisted by: Mr Vusumuzi Dlamini*  
*Gauteng Provincial Representative*