

**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 UNDUE DELAY BY THE
MPUMALANGA DEPARTMENT OF EDUCATION TO AMEND THE PENSION
CONTRIBUTION START DATE OF MR JOHANNES KGORO MALOKA**

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LIST OF ACRONYMS/ABBREVIATIONS

ACRONYM / ABBREVIATION	DESCRIPTION
Constitution	The Constitution of the Republic of South Africa, 1996
Department	Mpumalanga Department of Education
GEPF	Government Employees Pension Fund
GPAA	Government Pensions Administration Agency
HOD	Head of Department
NWDoE	North West Department of Education
Public Protector Act	Public Protector Act, 1994
Public Protector	Public Protector of the Republic of South Africa

1. INTRODUCTION

- 1.1 This is a report of the Public Protector issued in terms of section 8(1) of the Public Protector Act, 1994, which provides that “the Public Protector may, subject to the provisions of subsection (3), in the manner he or she deems fit, make known to any person any finding, point of view or recommendation, in respect of a matter investigated by the Public Protector”.
- 1.2 This Report relates to an investigation into allegations of undue delay by Mpumalanga Department of Education (the Department), to correct the pension contribution start date of Mr Johannes Kgoro Maloka.
- 1.3 The Public Protector’s mandate is derived from section 182(1) of the Constitution of the Republic of South Africa (the Constitution) and the Public Protector Act, 1994 (the Public Protector Act), to promote accountability, transparency and fairness in the public sector. The Public Protector continuously reviews and monitors the information gathered from complaints lodged with the office, with the view to identifying the most probable underlying root causes of the problems, complaints and undesired events within relevant public bodies or authorities.
- 1.4 The aim is to formulate and establish corrective actions to at least mitigate, if not eliminate, those root causes and to produce significant long-term improvements in the public administration.
- 1.5 The point of departure is that, any complaint might be a symptom of an underlying organisational failure, *inter alia* in areas such as systems, procedures and human error. By addressing the underlying deficiencies in the systems that are the causes of the complaints, the Public Protector aims to reduce the number of individual complaints, in turn, working

collaboratively with stakeholders to get the problems resolved and provide constructive feedback that will enable it to address the root causes of complaints and prevent recurrence.

2. THE COMPLAINT

2.1 The complaint was lodged with the Public Protector on 28 October 2021, by Mr Johannes Kgoro Maloka (the Complainant), who is a teacher at Mabothe Secondary School in Mpumalanga. The Complainant alleged that:

2.1.1 He has been requesting the Circuit and District offices of the Department, since March 2021, to amend his pension contribution start date (pension start date) with the Government Pension Administration Agency (GPAA) to reflect the correct pension contribution start date, however, the Department has failed to rectify the information with GPAA.

2.1.2 The Department's records indicate that he started contributing towards his pension on 28 February 1997, which is incorrect and is prejudicing him in terms of pension benefits as he started working on 10 January 1994 and has been paying pension contributions from that month.

2.1.3 This matter arose from the transition of employees from the former Bophuthatswana Department of Education to the Department in Mpumalanga.

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 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 Section 6(4)(c)(ii) of the Public Protector Act provides that, the Public Protector “*shall be competent at any time prior to, during or after an investigation, if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting from or make any other appropriate recommendation he or she deems expedient to the affected public body or authority*”.
- 3.5 The Public Protector Act further confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.
- 3.6 The Mpumalanga Department of Education is an organ of state and its conduct amounts to conduct in state affairs, 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, information and documents received during the preliminary enquiries, the following issue was identified to inform and focus the investigation:

4.1.1 Whether the Mpumalanga Department of Education unduly delayed to amend the pension start date of the Complainant, and if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounted to undue delay in terms of sections 6(4)(a)(ii) of the Public Protector Act, 1994.

5. THE INVESTIGATION

5.1 The Investigation Process

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

5.1.2 The investigation process included correspondence exchanged with the Complainant, the Department and the Government Pensions Administration Agency (GPAA). Meetings were also held with the Department. Documents obtained during the course of the investigation were analysed and evaluated, including consideration and application of the relevant law and prescripts.

5.2 The approach to the investigation

5.2.1 The investigation was approached using an enquiry process that seeks to determine:

5.2.1.1 What happened?

5.2.1.2 What should have happened?

5.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct and/or maladministration?

5.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the Mpumalanga Department of Education unduly delayed to amend the pension start date of the Complainant.

5.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department to prevent the improper conduct, maladministration or undue delay.

5.3 Key sources of information

5.3.1 Complaint form, dated 18 October 2021;

5.3.2 Allegations letter from the Public Protector to the Head of Department, Mrs LH Moyane, dated 02 March 2022;

5.3.3 Letter from the Head of Department to the Public Protector, dated 18 May 2022 and 20 May 2022;

5.3.4 Allegations letter from the Public Protector to the Nelspruit Branch Office Manager GPAA, Mr Mavela Mamba, dated 02 August 2022;

5.3.5 Letters from GPAA to the Public Protector, dated 07 September 2022 and 14 September 2022;

5.3.6 Letter from the Public Protector to Head of Department, Mrs LH Moyane, dated 15 November 2022;

5.3.7 Letter from the Department to the Public Protector, dated 24 November 2022;

- 5.3.8 Minutes of the meeting between the Public Protector and the Department, dated 07 December;
- 5.3.9 Letter from the Public Protector to the Head of Department, Mrs LH Moyane, dated 19 January 2023;
- 5.3.10 Subpoena issued by the Public Protector to the Head of Department, Mrs LH Moyane, dated 27 February 2023; and
- 5.3.11 Minutes of the Subpoena meeting between the Public Protector and the Department, dated 28 March 2023.

5.4 Legislation and other prescripts

- 5.4.1 Constitution of the Republic of South Africa, 1996;
- 5.4.2 Public Protector Act, 1994;
- 5.4.3 Government Employees Pension Law, 1996;
- 5.4.4 Rules of the Government Employees Pension Fund, 1996; and
- 5.4.5 Government Employees Members Guide.

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 Mpumalanga Department of Education unduly delayed to amend the pension start date of the Complainant, and if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounted to undue delay in terms of sections 6(4)(a)(ii) of the Public Protector Act, 1994**

Common cause

- 6.1.1 The Complainant is a teacher in the Mpumalanga Department of Education.
- 6.1.2 He transitioned from the former Bophuthatswana Department of Education to the Department in Mpumalanga.
- 6.1.3 His pension contribution start date with the Department reflects 28 February 1997.

Issue in dispute

- 6.1.4 The Public Protector is called upon to determine whether there was undue delay by the Department to amend and correct the pension start date of the Complainant.

Complainants' version

- 6.1.5 The Complainant alleged that since March 2021, he has been requesting the Circuit and District offices of the Department to amend his pension start date, as it reflects 28 February 1997 instead of January 1994, when he started making contributions thereto. Despite his repeated requests since March 2021, the Department has to assist. He contended that the incorrect capturing of this start date is prejudicing him in terms of the pension benefits which will in due course be due to him.

The Department's version

- 6.1.6 The Public Protector sent an allegations letter dated 02 March 2022, to the Head of Department, Mrs Lucy H. Moyane (Mrs Moyane). She responded in a letter dated 18 May 2022 stating, *inter alia*, that:
 - 6.1.6.1 The appointment date of the Complainant is correct as 10 January 1994, but his pension start date is incorrect; and

6.1.6.2 The Department requested the Complainant's payslips from National Treasury on three occasions, since they did not have his records. They also requested the same information from the North West (NWDoE) Department of Education, but the NWDoE did not provide the required information.

Additional information provided by the Head of Department

6.1.7 In an email dated 20 May 2022, Mrs Moyane confirmed that the Department has retrieved the Complainant's salary file from the NWDoE on 11 May 2022. The HOD also stated that the form Z125 was filled with relevant salary advice information, and they were submitted to the Government Employees Pension Funds on 13 May 2022.

6.1.8 She submitted that the pension contribution date of the Complainant will then be corrected by the GEPF from 01 April 1994 as confirmed by the payslips received from the North West Province.

GPAA's version

6.1.9 The Investigation Team also raised the matter with GPAA through a letter dated 02 August 2022, addressed to the Branch Manager of the Regional Office in Nelspruit, Mr Mavela Mamba.

6.1.10 GPAA's responses were received from the Acting Branch Manager, Ms Daizy Maleka (Ms Maleka). The first response was received through an email dated 07 September 2022, wherein it was indicated that:

6.1.10.1 According to the records in the Government Employees Pension Fund (GEPF), the Complainant's service date indicates that he started working in Government on 10 January 1994 and he started contributing towards the pension fund on 01 April 1994; and

6.1.10.2 The Department submitted a Z125 form to GPAA to effect the above changes on 12 May 2022, however, the Z125 form requested GPAA to correct the pension start date from 28 February 1997 to 10 January 1994,

while the attached supporting documents indicate that the Complainant started contributing towards pension on 01 April 1994, though he started working for Government in January 1994.

6.1.10.3 The GPAA advised that they have requested the Department to provide them with the Complainant's payslips from 10 January 1994, in order to confirm if the pension start date was 10 January 1994 or 01 April 1994, however, the Department did not submit the requested information.

6.1.11 In her second response, in an email dated 14 September 2022, Ms Maleka confirmed that the Complainant's GEPF records have been amended to reflect the correct pension start date of 01 April 1994.

Consultation between the Investigation Team and the Complainant

6.1.12 On 21 September 2022, the Complainant was contacted by the Public Investigation Team to confirm that his contribution status has been rectified as advised by the and he indicated that the pension start date on his payslip is reflecting "99999999".

Meeting between the Investigation Team and the Department

6.1.13 On 07 December 2022, a meeting was held by Investigation Team with the Department, which was represented by Mr CR Mhlabane (Mr Mhlabane), a Deputy Director based at Nkangala District, in an attempt to determine how the matter could be resolved.

6.1.14 Mr Mhlabane submitted that, the pension start date of the Complainant was corrected with GPAA, however, his pension start date on the payslip was still incorrect as it reflected "99999999", instead of 01 April 1994.

6.1.15 In addition, he undertook that the error on the payslip would be corrected and proof of changes would also be communicated to both the Complainant and Investigation Team.

Public Protector subpoena hearing with the Department

- 6.1.16 A subpoena was issued to the Department to provide confirmation that the Complainant's information relating to his commencement date as a contributor to the pension fund has been rectified as undertaken by Mr Mhlabane.
- 6.1.17 On 27 February 2023, a subpoena hearing was held with the Department, represented by Mrs Moyane, the Head of Department. She advised the investigation team that the pension start date of the Complainant has been rectified with GPAA from 28 February 1997 to 01 April 1994. She further indicated that the Complainant was appointed on 10 January 1994 and only started contributing towards pension on 01 April 1994. She added that the incorrect dates of "99999999" on the Complainant's pay slip indicate that the Complainant's records are still under construction at GPAA and that the Department will engage GPAA regarding the matter.

Information received from the Complainant

- 6.1.18 In an email dated 24 May 2023, the Complainant provided the Investigation Team with a copy of his salary advice for the month of May 2023, reflecting his commencement date as a contributor to the government pension fund as 01 April 1994. In the email, the Complainant further conveyed his gratitude to the Investigation Team for assisting him to resolve this dispute with the Department.

Applicable law

The Constitution of the Republic of South Africa, 1996

- 6.1.19 The Constitution is the supreme law of the Republic of South Africa and any law inconsistent with it, is invalid¹. Section 195(1) of the Constitution lays

¹ Section 2 of the Constitution.

down the basic values and principles governing public administration as follows:

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

(e) *People’s needs must be responded to...*

(f) *Public administration must be accountable.*

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

(2) *The above principles apply to-*

(a) *administration in every sphere of government;*

(b) *organs of state; and*

(c) *public enterprises.” (Own emphasis)*

Government Employees Pension Law, Proclamation 21 of 1996

6.1.20 The objectives of the Pension Law is to regulate the administration of pensions and other benefits for persons in the employment of the government, pensioners and their dependants or nominees.

6.1.21 Section 4(1) of the Pension Law provides that any person who immediately before the fixed date is a member or pensioner of the Fund, shall remain such a member or pensioner.

6.1.22 Section 4(2) states that any person who on or after the fixed date is appointed in the service of the employer shall subject to section 5 be a member of the Fund with effect from the date of such appointment.

6.1.23 According to section 4(3) any person who immediately before the date determined in terms of section 14(1)(a) in respect of a previous fund, is a

member or pensioner of that fund, shall with effect from that date be a member or pensioner of the Fund.

- 6.1.24 Section 14(1)(a) provides that a previous fund shall be discontinued with effect from a date determined in respect of that fund by the Minister and according to section 14(5), “*previous fund*” means, amongst others,

“(d) the Government Pension Fund of Bophuthatswana, established by section 2 (l) of the Bophuthatswana Government Service Pensions Act, 1977 (Act 14 of 1977), of the former Bophuthatswana.”

Rules of the Government Employees Pension Fund

- 6.1.25 According to Rule 5.1 of the Rules of the Government Employees Pension, ‘*A person becomes a member of the fund in terms of section 4 of the law*’.

Government Employees Members Guide (Undated)

- 6.1.26 According to page 12 of the Government Employees Pension Fund Members Guide, the pensionable service starts from the day a member starts paying monthly pension contribution and continues until the day they stop working for the employer. In other words, a member’s pensionable service is the period in which one is an active, contributing member of GEPF.

Analysis

- 6.1.27 Based on the information and evidence before the Public Protector, it is evident that the Complainant’s information relating to his commencement date as a contributor to the government pension fund was incorrect.
- 6.1.28 Records at the Department as well as at the GPAA indicated that the Complainant only became a contributor to the government pension fund on 28 February 1997, instead of 01 April 1994.

- 6.1.29 The Complainant requested the Department to rectify his commencement date with the GPAA in March 2021, however, the Department delayed to correct the records and give feedback to the Complainant until he sought the intervention of the Public Protector in October 2021.
- 6.1.30 The intervention by the Public Protector prompted the Department to engage their counterparts in the NWDOE and even went to retrieve the Complainant's salary file from the North West Province. The salary advice obtained by the Department from the NWDoE confirmed that the Complainant became a contributor to the government pension fund from 01 April 1994.
- 6.1.31 Based on the updated information provided by the Department, the GPAA proceeded to correct the Complainant's pension records to reflect the commencement date as 01 April 1994.
- 6.1.32 Although the GPAA stated that the Complainant's pension start date had been rectified, however, his salary advice still reflected his commencement date as "99999999" instead of 01 April 1994, thus further necessitating further intervention by the Investigation Team.
- 6.1.33 As indicated above, the Complainant confirmed in an email dated 24 May 2023, that his salary advice for that month correctly reflected the contribution commencement date as 01 April 1994. It is evident that the Department had erroneously recorded 10 January 1994 in the Z125 submitted to the GPAA which is the Complainant's appointment date in government instead of 01 April 1994. Nevertheless, the Complainant has indicated that his satisfaction with the corrected pension date which is in line with the payment advice obtained from the NWDoE.
- 6.1.34 In terms of section 195(1) the Department was obliged to be responsive to the Complainant and attend to his request for correction of his pension start date, however, the Department delayed to do so.
- 6.1.35 Furthermore, the Department is enjoined to provide the Complainant with timely and accurate information pertaining to his matter as espoused in section 195(e) of the Constitution which provides amongst the democratic

principles governing public administration that people's needs must be responded to. In this instance, the Department failed to update the Complainant on any measures it was undertaking towards rectifying the Complainant's pension information.

6.1.36 The Complainant would have forfeited three (3) years' of his pension benefits on retirement or resignation from the public service had he identified the error and become persistent in his quest to have the matter resolved, including approaching the Public Protector for intervention.

6.1.37 The Department advised during the course of the investigation that it had once issued a circular requesting officials to verify with the Human Resources section if their pension contribution start dates were correct, however, no further efforts were made by the Department to identify officials who have pension contribution start date challenges and who might not have access to emails and circulars. The Department was also not able to furnish any further particulars regarding this circular to the Investigation Team.

6.1.38 The Department has, however, undertaken to visit the former Bophuthatswana Department of Education (now the North West Department of Education) to retrieve information regarding officials who were transitioned from the former Bophuthatswana Department of Education to the Department, in order to rectify their pension contribution dates. This effort would serve to identify and address any similar issues pertaining to other officials, which may have gone undetected.

Conclusion

6.1.39 The evidence obtained during the course of the investigation indicates that the Department delayed to obtain the relevant information from the NWDoE in order to confirm his pension commencement date and provide same to the GPAA for rectification after it had been brought to its attention by the Complainant.

6.1.40 Through the intervention of the Public Protector, however, the Department attended to the rectification of the Complainant's pension start date as required, furthermore, it undertook to retrieve the records of officials who may be affected by the same issue as the Complainant and to attend to the rectification of their records accordingly.

7. OBSERVATIONS

7.1 The Department unduly delayed to amend the pension start date of the Complainant when he was transferred from the former Bophuthatswana Department of Education to the Department in Mpumalanga, furthermore, when the Complainant approached the Department in March 2021, seeking to have his records corrected, he encountered delays and he was not assisted.

7.2 Through the intervention of the Public Protector, the pension start date of the Complainant was corrected on GEPF records from 28 February 1997 to 01 April 1994. The pension start date on the Complainant's payslip has also been rectified to reflect 01 April 1994, as at May 2023.

8. INTERVENTION

8.1 It is therefore recommended, in terms of section 6(4)(c)(ii) of the Public Protector Act, that:

The Head of Department

8.1.1 As undertaken by Mr Mhlabane in the meeting held on 07 December 2022, that the Department will ensure that all personnel files of officials who transitioned from the former Bophuthatswana Department of Education are retrieved in order to identify those officials whose pension start dates were not updated on GEPF records during the transition and engage GPAA for the purpose of updating their records accordingly. This will assist to minimise the risk of paying incorrect pension benefits to affected officials, it

will also promote the values and principles stipulated in section 195(1) of the Constitution.

9. CONCLUSION

9.1 The Public Protector considers this matter as finalised and cannot take the matter any further. Should any party be dissatisfied with this decision they are at liberty to explore legal remedies at their disposal.



**ADV. KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 30 JUNE 2023**

*Assisted by: Adv Elsabe De Waal
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