

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



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO 39 of 2007/2008

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF
MALADMINISTRATION AND UNDUE DELAY RELATING TO THE PAYMENT OF
PENSION BENEFITS TO A FORMER EMPLOYEE OF THE DEPARTMENT OF
EDUCATION OF THE LIMPOPO PROVINCIAL GOVERNMENT, MS I S ELBRECHT**

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EXECUTIVE SUMMARY

The Office of the Public Protector (OPP) investigated a complaint of maladministration relating to the payment of pension contributions and undue delay in the submission of pension documents by the Department of Education of the Limpopo Provincial Government (the Department), to the Government Employees Pension Fund (the GEPF) and the subsequent delay in payment of pension benefits to a former employee of the Department, Ms I S Elbrecht (the Complainant).

From the investigation it was found that the Department failed to pay over monthly pension contributions in respect of the Complainant to the GEPF for a period of five years (1997 to 2002). The Department also failed to pay the Complainant's salary and notch increases for the same period. It was also found that the Department was responsible for the undue delay in submitting duly completed pension documents to the GEPF, after the retirement of the Complainant. The Complainant was prejudiced by the maladministration and the long delay in the matter.

The pension benefit for the period 1980 to 1997 was paid to the Complainant on 14 November 2006. Following negotiations between the parties facilitated by the OPP, the Department paid over the arrear pension contributions to the GEPF. The pensionable period of the Complainant was amended by the GEPF, her pension benefit re-calculated and the outstanding benefit paid to the Complainant on 06 November 2007. The Complainant is entitled to interest on her pension benefits for the period of five year and nine months.

The Public Protector recommended that the Department pays interest on the pension benefits paid to the complainant by GEPF on 14 November 2006 and 6 November 2007, at the rate that was applicable at the time, in terms of the

Prescribed Rate of Interest Act, 1975, within a period of three months after receipt of this report.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND UNDUE DELAY RELATING TO THE PAYMENT OF PENSION BENEFITS TO A FORMER EMPLOYEE OF THE DEPARTMENT OF EDUCATION OF THE LIMPOPO PROVINCIAL GOVERNMENT, MS I S ELBRECHT

1. INTRODUCTION

1.1 This is a report 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.

1.2 It is submitted to the Head of the Department of Education of the Limpopo Provincial Government (the Department).

1.3 The report relates to an investigation into allegations of undue delay and maladministration by the Department for:

1.3.1 Failing to pay pension contributions to the Government Employees Pension Fund (the GEPF) in respect of a former employee, Ms I S Elbrecht (the Complainant) for the period 1 March 1997 to 28 February 2002;

1.3.2 Failing to pay annual increases and to adapt salary notches of the Complainant for the period 1 March 1997 to 28 February 2002;

1.3.3 A delay in submitting detailed pension records to the GEPF, for the period 1 January 1980 to 28 February 2002, during which the Complainant was employed by the Department.

2. THE LEGAL MANDATE, POWERS AND FUNCTIONS OF THE PUBLIC PROTECTOR

2.1 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.”*

2.2 In terms of section 6(4)(a) of the Public Protector Act, 1994 the Public Protector is competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged maladministration in connection with the affairs of government, abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function.

2.3 The Public Protector may at any time prior to, during or after an investigation make any appropriate recommendation that he/she deems expedient to the public body or authority affected by it.

2.4 The allegations of undue delay and maladministration made against the Department, fall within the powers and jurisdiction of the Public Protector to investigate.

3. THE COMPLAINT

3.1 The Complainant approached the Office of the Pension Fund Adjudicator on 27 June 2003. The matter was then referred to the Office of the Public Protector (the OPP) on 08 July 2003.

3.2 It was alleged that the Complainant had been employed by the Department for the period 1 January 1980 to 28 February 2002, when she retired.

- 3.3 She contributed to the GEPF for the period 01 January 1980 to 28 February 1997.
- 3.4 In March 1997 the Department ceased to deduct her pension contribution from her salary and to pay over any benefits to the GEPF on her behalf.
- 3.5 No annual increases or further notch increases were added to her salary from March 1997, until she retired.
- 3.6 The Complainant and her manager continually raised the matters with the Department up to November 2001, but without success.
- 3.7 She completed her retirement documents in November 2001, and received an acknowledgement from the Department in January 2002, as well as an approval to retire on 28 February 2002.
- 3.8 After her retirement, no pension benefits were paid to the Complainant and the Department also failed to pay out her accumulated leave.
- 3.9 The Complainant enquired about the delay and raised the matter with the Senior Regional Manager (Region 5) of the Department, Dr Lowan, in writing on 16 April 2002, 03 October 2002, 05 November 2002, 15 April 2003 and 09 June 2003, **without any response**.
- 3.10 She then approached the Pension Fund Adjudicator, who referred the matter to the OPP.

4. THE INVESTIGATION

- 4.1 The investigation was conducted in terms of sections 6(4) and (7) of the Public Protector Act, 1994 and comprised of the following:

- 4.1.1 Consideration of the documents submitted by the Complainant;
- 4.1.2 Consultation with the Complainant;
- 4.1.3 Consultation and correspondence with officials of the Department;
- 4.1.4 Consultation and correspondence with officials of the GEPF;
- 4.1.5 Submission of salary advices of the Complainant to the Department and the GEPF, indicating pension contributions to the GEPF; and
- 4.1.6 Facilitation of negotiations between the Department, the Complainant and the GEPF.

5. THE GOVERNMENT EMPLOYEES PENSION LAW, 1996

- 5.1 In terms of section 26(1) of the Government Employees Pension Law, 1996 (Proclamation 21 of 1966) (the Act), pension benefits shall be paid to a beneficiary within a period of 60 days, after the date on which the GEPF receives the **duly completed pension documents** from the employer department
- 5.2 Section 26(2) of the Act provides that if a member is not paid within the period referred to in subsection (1), interest shall be paid by the GEPF to the beneficiary, at the rate prescribed.
- 5.3 This provision is the result of an amendment in 2004, and thus only applicable to employees who resigned (or passed away), and thus exited the GEPF Fund, **on or after 11 November 2004**. It provides that members will be entitled to interest on any unpaid benefits, if such

- benefits are still unpaid 60 days after the member has **exited** the GEPF, **irrespective** of whether the delay in payment of benefits has been caused by the GEPF or the employer department.
- 5.4 The previous section 26 of the Act (the “old rule”) limited the liability of the GEPF to pay interest, in that payment of interest was calculated from the date 60 days after the date on which the GEPF received the duly completed pension documents from the employer department, and this could be months or even years after resignation or death of the member (like in the matter under investigation). Beneficiaries then had to approach the employer department to claim interest, based on the improper and negligent delay of the submission of the said pension documents to the GEPF.
- 5.5 The Complainant retired on 28 February 2002 and thus exited the GEPF under the “old rule”. No interest on benefits was paid to her by the GEPF, as all benefits were paid out to the Complainant (in both instances), within 60 days after receipt by the GEPF of the duly completed forms.
- 6. STEPS TAKEN BY THE OFFICE OF THE PUBLIC PROTECTOR**
- 6.1 Before the amount payable as pension benefits could be determined by the GEPF, the annual salary increases had to be calculated, to determine the correct notch of the Complainant’s salary at the time of retirement. Accumulated leave days also had to be determined by the Department, and the benefit thereof had to be paid out to the Complainant.
- 6.2 The OPP raised the matter with the Giyani Office of the Department on 25 September 2003 and again on 06 November 2003, and requested them to attend to the issues mentioned in paragraph 6.1 above.

- 6.3 On 12 December 2003 Ms Maluleke of the Giyani Office responded and indicated that they were attending to the issues raised.
- 6.4 Numerous calls and letters to the Giyani Office followed, without any progress made in the matter.
- 6.5 In March 2004, the Complainant was requested by the Department to re-submit information and documents on her outstanding pension benefits.
- 6.6 The arrears on annual increases and accumulated leave were only paid out to the Complainant in September 2004 and November 2004.
- 6.7 The Department was requested to deduct the arrear pension contributions of the Complainant for the period 1997 to 2002, when they paid out her salary arrears in November 2004. They were supposed to pay the arrears over to the GEPF, to enable them to amend the period of pensionable service. The Department failed to do this.
- 6.8 On further inquiries by the OPP, the officials of the Giyani Office indicated that they would deliver the pension documents to the GEPF in December 2004.
- 6.9 The OPP constantly monitored progress on the matter, and was informed by the Department in February 2005, that "*National Treasury had not received the forms*".
- 6.10 No progress was made and the Giyani Office eventually informed the OPP that the Complainant's file had been sent to the Head Office of the Department, for amending the salary notches of the Complainant on the electronic system, before they could submit the pension documents to the GEPF.

- 6.11 This again caused a delay, as apparently the file was again sent back to the Giyani Office, without clear instructions on what they should do.
- 6.12 The OPP raised the matter with the Head of the Department, Professor Nengwekhulu, on 25 April 2005, and again on 24 May 2005.
- 6.13 No response was received from the Head of the Department, and the OPP approached the Member of the Executive Council responsible for Education (the MEC), Dr Motsoaledi, on 20 June 2005, and again on 20 July 2005.
- 6.14 The MEC acknowledged receipt of the complaint, but merely informed the OPP that he referred the matter back to the General Manager for Human Resources of the Department, Mr S E Sekole.
- 6.15 On 05 August 2005 the OPP contacted Mr Sekole, who advised that he would attend to the matter and respond within a few days.
- 6.16 No response was received from Mr Sekole and several attempts by the OPP to contact him telephonically were unsuccessful.
- 6.17 The Complainant was **again** requested in September 2005 to re-submit all pension forms, as the previous forms were outdated (older than 6 months). In November 2005 the Department repeated the request, as the previous forms were completed in blue pen and not in black.
- 6.18 On 12 December 2005 the Department informed the OPP that all documents were in order and that they would submit them to the GEPF within a week.

- 6.19 Inquiries at the GEPF on progress of the matter proved negative, and the OPP was informed that no pension documents were received.
- 6.20 On 13 March 2006, the OPP again in writing requested the MEC to intervene in the matter, as no response was received from the Human Resources Manager, Mr Sekole. A notice of intention to subpoena was also sent to Mr Sekole, indicating that formal steps would be taken against him if no response was received on or before 27 March 2006.
- 6.21 Again no response came forth, and two similar notices were sent to Mr Sekole by the OPP on 28 March 2006 and 4 May 2006.
- 6.22 A second request for assistance was also sent to the MEC on 4 May 2006, as no response was received from his office on the letter dated 13 March 2006.
- 6.23 On 4 May 2006 Mr Sekole eventually contacted the OPP and indicated that they (Head Office) were attending to the matter, as the officials of the Giyani Office did not know how to deal with the matter.
- 6.24 On 30 May 2006 the Complainant informed the OPP that she was yet again requested by the Department to re-submit all the relevant information and forms, which she did for the fifth time.
- 6.25 The Giyani office informed the OPP on 31 May 2006 that the completed pension documents would be submitted to the GEPF within a few days.
- 6.26 On 22 June 2006 the OPP received a report from Mr Sekole, one year after the matter was sent to him by the MEC. According to the report the matter was delayed as "*no records were available for some of the periods,*

and the department had to liaise with other state organs like SITA for assistance in retrieving records.”

- 6.27 With regard to the non-payment of pension contributions to the GEPF by the Department for the period 1 March 1997 to 28 February 2002, no explanation was offered. It was merely mentioned that the Complainant *“only contributed to UIF. No [pension] withdrawal has been made for the period 1997 - 2002. The department has accordingly lodged pension withdrawal forms with National Treasury for the period 1997 – 2002.”*
- 6.28 On 11 October 2006 an inquiry was sent to the GEPF, to monitor progress on the payment of benefits. The GEPF informed the OPP that the documents (Z102) were only received by their Limpopo Office on **5 October 2006**, and not in June 2006, as was indicated in the report of Mr Sekole.
- 6.29 The GEPF processed the documents and the arrears for the period March 2002 to November 2006 were paid to the Complainant on 14 November 2006. Her gratuity was paid on the same day.
- 6.30 The OPP then met with Mr Sekole and officials of the Giyani Office on 20 November 2006, to investigate the issue of non-payment of contributions by the Department for the period 1997 to 2002. The following issues were discussed and resolved:
- 6.30.1 *Ms Elbrecht was employed by the Department from 1 January 1980 to 28 February 2002.*
- 6.30.2 *Pension contributions were deducted from her salary and paid over to the GEPF on her behalf, for the period 1 January 1980 to 28 February 1997.*

- 6.30.3 *For the period 1 March 1997 to 28 February 2002, no pension contributions were deducted from her salary, and none were paid over to the GEPF. The reason for this was unknown, as none of the officials present at the meeting were in a position to gather any information on this issue from the file content.*
- 6.30.4 *Ms Elbrecht continuously raised this issue with the Department during the last 5 years of her employment, without success.*
- 6.30.5 *Ms Elbrecht was prejudiced by the conduct of the Department, as she lost 5 years of benefits on her retirement.*
- 6.30.6 *The Department would supply the OPP with proof of salary for the period 1 March 1997 to 28 February 2002, which would be submitted to the GEPF to enable it to calculate the outstanding benefits for the period mentioned.*
- 6.30.7 *The Department would pay over the outstanding employer's contributions to the GEPF, with interest, as soon as the calculations were submitted to it by the GEPF.*
- 6.30.8 *The Department would also be responsible for payment of the interest on the arrear contributions of Ms Elbrecht.*
- 6.30.9 *The OPP would negotiate the payment of the arrear employee's contributions with the GEPF, and request that the arrears be deducted from the final benefit payable to the Complainant.*

- 6.31 The OPP requested the GEPF to calculate the arrear contributions for the period 1997 to 2002 and submitted the calculations to the Department on 6 February 2007.
- 6.32 On 03 April 2007 the arrears of R99 310.55 (including interest) were paid to the GEPF by the Department.
- 6.33 The OPP requested the GEPF to do a re-calculation of the benefits, to include the period 1997 to 2002.
- 6.34 The GEPF requested an amended Z 102 from the Department on 9 May 2007.
- 6.35 The Department again failed to respond to the request and to answer to correspondence from the OPP.
- 6.36 Several reminders were sent to the Giyani Office during the period May 2007 to August 2007. The amended Z102 was only delivered to the GEPF on 7 September 2007.
- 6.37 The pension benefits of the Complainant were re-calculated by the GEPF and were eventually paid on 6 November 2007.
- 6.38 On 30 August 2007 a draft of this report was sent to the Senior District Manager of the Giyani Office, Dr L Mafenya, for her comments.
- 6.39 No response or comments on the draft report were received from Dr Mafenya or any of the officials of the Giyani Office.

7. OBSERVATIONS

- 7.1 The Department was obliged to deliver the relevant pension documents to the GEPF within **a reasonable time** after the retirement of the Complainant, as the GEPF calculates pension benefits according to the information received from the employer department.
- 7.2 According to the GEPF, 6 to 8 weeks is generally regarded by government departments as a "*reasonable time*" in this regard.
- 7.3 If the Complainant were to proceed with legal action against the Department, she would in all probability succeed with a claim for interest, based on the fact that the Department does not dispute that the relevant documents were not forwarded to the GEPF within a reasonable time after retirement of the Complainant.
- 7.4 The Department failed to discharge their duty of service delivery in respect of the complainant, causing her to be improperly prejudiced.
- 7.5 No interest was paid to the Complainant by the GEPF, as the benefits were paid out on both instances, within the prescribed period of 60 days after the GEPF received the duly completed documents from the Department.

8. KEY FINDINGS

- 8.1 The Department was responsible for the undue delay in submitting duly completed documents relating to the Complainant's pension benefits to the GEPF.

8.2 The Complainant was prejudiced by the long delay in this matter, and is entitled to interest on her pension benefits for the period of delay.

9. RECOMMENDATIONS

9.1 In terms of the provisions of section 182(1)(c) of the Constitution, 1996 and section 6(4)(c)(ii) of the Public Protector Act, 1994, it is recommended that:

9.1.1 The Department pays interest on the amount representing the pension benefits paid to the Complainant on 14 November 2006 and 06 November 2007, calculated from a date six weeks from the date of retirement, until the date on which the final pension documents were submitted to the GEPP (07 September 2007), at the same rate as the rate prescribed (as at that time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975); and

9.1.2 The interest referred to in paragraph 9.1.1 above, be paid to the Complainant within a period of three months after receipt of this report.

**ADV M L MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA**

Date:

Assisted by: Ms M J Fourie, Senior Investigator