

54. The CEO addressed a further letter to me regarding the matter on 17 December 2021. It is attached marked "NN8".
55. The CEO submitted a report dated 17 January 2022 to the PP and the DPP responding to the question posed to her of what corrective or disciplinary action to take against me and the other EMs (the project sponsor, Mr Mohalaba, had by then left the organisation), and whether we should be formally charged. A copy is attached marked 'NN9'. In it the CEO set out:
- 55.1. The reasons for the non-achievement of the target, which reasons included that the deadline was unrealistic to begin with.
- 55.2. The factors that contributed to the development of a backlog in the first place which included low staff morale; various human resource capacity constraints; frequent *ad hoc* requests from head office and meetings which disrupt workflow.
- 55.3. A fundamental principle in the FPSA's Disciplinary Code and Procedure is that discipline should be corrective and not punitive.
56. In the end, for all the reasons the CEO set out in her report she concluded that any disciplinary or corrective steps against us would not meet the test for fairness. Her recommendation was that such action not be taken against us.
57. The PP was even more rigid when it comes to dealing with the backlog cases. She will refuse to entertain any realistic deadlines proffered to her by EMs on the grounds, primarily, that the complaint or matter is already old. The difficulty

with this approach is the fact that a complaint is old cannot be an overriding factor in deciding what constitutes a reasonable, realistic deadline. Factors such as the complexity of the investigations; the availability of witnesses; the skills and expertise required for the investigation (especially complex ones); or any constraints presented by the investigation are equally relevant. In fact, old matters may be even more difficult to finalise quickly, because, for example, witnesses and evidence are difficult to access or no longer available.

58. A further difficulty with an approach that refuses to have regard to relevant factors is that if an investigation is at an early stage, an Investigator or an EM may not be in a position to determine what product is going to be delivered, or when it can be produced, because the investigation is just not ripe. This is because in the early stages of an investigation, one does not yet have a full appreciation of the matter, what issues it raises, what witnesses need to be interviewed, and so on. So, for example, one does not necessarily know, at an early stage, whether the investigation will likely result in a section 7(9) notice, or a discretionary notice (termination notice).
59. This is how many unrealistic dates and milestones were imposed. This approach was evident as far back as 2019.
60. I annex, marked "NN10", a copy of the minutes of the Leadership meeting held on 7 May 2019. It records that the COO was "to put more emphasis on turnaround times" and that "cases 2 years and older to be completed by End May 2019". This uniform approach to all "old cases" was unrealistic, and failed



to account for the different circumstances that applied to the different investigations.

61. I attach, marked "NN11", a copy of a presentation that I prepared on cases older than 2 years as at 26 June 2019 in respect of some of the Provincial Offices for which I was responsible. This was in response to the first *audi* letter that was issued to me by Ms Basani Baloyi when I was only a few months in the organisation.

62. The presentation sets out relevant detail regarding the various investigations that were older than two years, including the status of the investigation and reasons why there were delays in finalisation.

63. The presentation records the following under "*General Comments*":

63.1. While PII acknowledges that the PP had set the deadline for the finalisation of all cases older than two years to 20 June 2019, various factors affected the realisation of this target including:

63.1.1. s7(9) notices and /or reports being sent back to the PR due to poor quality standards

63.1.2. Absence of PRs and/or investigators due to illness, vacation and study leave

63.1.3. Pressure to take vacation leave to avoid forfeiture at the end of June. This was accompanied by some resistance to finalise cases and take leave later due to fatigue

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63.1.4. PII having a higher workload to do quality assurance on all s7(9) notices and /or reports

64. The presentation records the following under "*Measures to be implemented*":

64.1. Proper and closer management of PRs;

64.2. Monitoring of cases through monthly reports from PRs;

64.3. Training of PRs and investigators on report writing to reduce time spent by PII doing quality assurance; and

64.4. Filling of vacant positions with competent investigators.

65. I attach, marked "**NN12**", a copy of email correspondence from the PP's Chief of Staff, Ms Lethabo Mamabolo, regarding the necessary preparations for the Task Team meeting to be held on 22 June 2020.

65.1. The progress reports had to be updated by 16h00 on the preceding Thursday (18 June 2020).

65.2. "*Progress as updated on the PP's Task Register should kindly be limited to what Product and by when and kindly do not capture the internal processes.*"

65.3. By stipulating that we should not refer to "*internal processes*", the indication was that we were not allowed to explain the challenges within our respective branches that were affecting the achievement

of deadlines and could not provide updates on the status of the various investigations for which we were responsible. These were considered "*internal processes*" that the PP did not want referred to. However, these processes were of critical importance, including in understanding why particular deadlines might not be met.

65.4. I objected to this exclusive focus on "*What product and by when*" on several occasions. However, my objections were not heeded. Although objections are never reflected in the minutes of meetings, they can be heard from recordings of these meetings.

65.5. Because of the PP's insistence on stipulating products and deadlines, I resorted to giving the generic answer that either a discretionary notice or a section 7(9) notice were the next products. If the deadline for those products was not met, I would have to account for the lateness.

66. I attach, marked "NN13", a copy of the report on matters arising from the Leadership meeting held on 9 March 2020, updated as at 26 June 2020. Item 92 thereof records the PP's insistence that presentations on matter updates should not deal with "*internal processes*", but should "*only capture what Product by when to en route to the Executive Authority*".

67. After Mr Mohalaba's resignation, Ms Lethabo Mamabolo assumed the role of Acting COO in October 2021, and she came up with a phased approach for dealing with backlog matters, which was put into operation in January 2022. A decision was then taken to projectise the remaining matters to ensure

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finalisation by the end of March 2022. But a number of these were not finalised by that date, given the complexity of the investigations.

68. I was assigned to Phase 3 of the project which dealt with the drafting and quality assurance of all submissions such as s7(9) notices and discretionary notices. Each phase was made up of PRs, CIs, senior investigators and investigators under the guidance of an EM. The challenge with the phased approach is that the responsible EM no longer performed the oversight role relating to their unit, but exercised oversight in relation to the phase to which they were assigned. Where gaps in the investigation were identified in the s7(9) notice in Phase 3 this was communicated back to Phase 1 to obtain the information. The formal report was submitted directly to Phase 4 without the relevant EM having seen the report. This phased approach caused much confusion.

69. The Acting COO also could not cope with the number of matters submitted to her office. When I took over the acting position as COO in July 2021 there were more than 50 matters in the acting COO's office some dating back to 2021 including section 7(9) notices, subpoenas, discretionary notices, letters that required the PP's signature.

D. STAFF MORALE AND THE UNHEALTHY WORKPLACE

(a) Audi letters

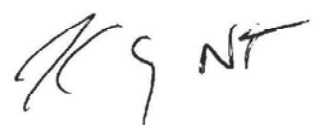
70. I do not take issue with the PP attempting to clear or reduce the PPSA's investigation backlog. In fact, I think that is commendable but the manner in

- which it is being done has seriously and negatively impacted on the human resource of the PPSA.
71. In the same vein, I do not take issue with management cracking the whip where performance has been substandard. In some cases, it appears shocking how little has been done to investigate certain complaints that have been received, or the length of time it has taken to get to certain complaints. But the reasons for this are not necessarily a dereliction of duties. I would support any reasonable effort to instil appropriate workplace focus and discipline without intimidation or victimisation to get to the requisite outcome which do not negatively impact on the health and private lives of employees.
72. Much of the value of the PPSA lies in its human capital: its investigators and other staff who work to serve the public by addressing their complaints of improper or prejudicial conduct in state affairs. Those staff members must be treated reasonably, respectfully and with understanding and patience taking that work must not interfere with private lives of employees who have life outside PPSA which demanded equal attention.
73. The PP would not merely insist that investigation procedures be rushed. She would also require that action be taken when staff did not rush procedures.
74. The manner in which the PP was proceeding was destroying staff morale. People were broken, chasing the PP's unrealistic deadlines. The PP also required staff members who missed deadlines to be sent *audi* letters and threatened with disciplinary action. The constant threat of disciplinary action hung like a dark cloud over PPSA investigators. The fear and victimisation

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came from knowing that the threats were not empty threats, as was evident by the frequent instructions to issue *audi* letters and *audi* letters that were issued.

75. As stated above I started at the PPSA in my current position on 1 March 2019. When I arrived, there was already a massive backlog of over 400 cases older than two years, and the target was to eradicate them by 31 March 2019. The target was not met, and the PP was unhappy about this. The target was shifted, first to the end of June 2019, and then once again to 31 July 2019.
76. After a tense Dashboard meeting on 24 June 2019 where these unmet targets in the various cases was discussed, at which it became apparent that my unit would not meet the target date of 31 July 2019, the PP instructed the COO, Ms Basani Baloyi to take steps against EMs.
77. On 6 August 2019 Ms Basani issued me with an *audi* letter in relation to the failure to meet the target of 31 July 2021 when I was merely five months in the institution, and still serving my probation.
78. My response to Ms Baloyi is attached marked "NN14". In my response it set out the following regarding the target dates:
- 78.1. Whilst I had agreed to the target of 31 July 2019, this was done at the insistence of the PP who gave no leverage to go beyond this period. I explained that this was based on an adverse response from the PP, who rejected any suggestion that went beyond the stipulated period on the



basis that the cases should already have been finalised by 31 March 2019.

- 78.2. These targets were also set without consultation with the PRs and without taking into account the workload of the affected investigators. This approach created acrimony between myself as the EM: PII Inland and the PRs who felt that Head Office did not appreciate their workload.
- 78.3. This further became evident in an escalation of absenteeism due to ill health.
- 78.4. I pointed out what was a major concern to me, i.e., the quality of the section 7(9) notices and reports I was receiving from the provinces. To me the poor quality was indicative of a serious need for training on report writing for both investigators and PRs. This deficiency placed a huge burden on me to even re-write some of the notices and reports.
79. The solutions which I proposed to the COO who was Ms Baloyi at the time included the following:
- 79.1. Allowing us to set realistic targets that all of us could commit to and achieve;
- 79.2. Limit the number of meetings until these cases can be finalised;
- 79.3. In the long-term provide further training to investigators and PRs which will limit re-work, which consumes a lot of time and delays the finalisation of cases.

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80. I wish to point out that there is nothing wrong with giving an employee an opportunity to assert their right to be heard. In the best sense, that is what the *audi alteram partem* principles seeks to achieve. In the PPSA, however, that is not how *audi* letters are used at the PPSA. The constant threat of being subjected to disciplinary steps began with the issuance of an *audi* letter in circumstances where, as the EM, you have already furnished an explanation to the PP, which was unacceptable to her. An *audi* letter is an escalation of the situation, which now requires, as far as the PP is concerned, that you be dealt with formally by your manager. In addition, the *audi* letters accumulate in your personnel file, further potentially jeopardising your livelihood. I was not the only staff member who lived with this constant fear.
81. *Audi* letters are punitive in nature, when performance improvement must be progressive. The fact that we could not set realistic deadlines and PRs and investigators were mostly not even present when these deadlines were set, but rather the deadlines were communicated to them by the EM after the meeting with the PP, added to the unfairness of the *audi* letters.
82. The reality is that there were many factors which contributed to the failure to complete investigations. These included the fact that vacant positions were not filled on time due to financial constraints, which meant that the active cases had to be distributed amongst those remaining. This was also relevant in cases where investigators transferred to another province. The rule is that such investigators must transfer with their caseload which meant that the new PR and the new unit inherited matters already in the backlog that they

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previously had no control over but would nevertheless be held to the same timeframes and deadlines.

83. The former COO, Mr Mohalaba, was instructed to discipline me for refusing to be held on a deadline that I had not set, because I was not part of that unit at the time. I was told to apologise, which I refused to do. All of these are issues that contribute to the culture of fear, intimidation and victimisation at the PPSA.
84. In early 2020, the Leadership of the PPSA made the decision to embark on a consultative process with investigative staff. The purpose of the engagement was to gather information and concerns about the reasons for non-finalisation of matters within the prescribed time frames resulting in backlogs, non-achievement of targets, and shifting of deadlines. The DPP was requested to lead the discussions with the assistance of the ACEO and the Chief of Staff. They held meetings with staff during February and March 2020.
85. The challenges identified by investigators included the following, and more to which I have alluded above:
 - 85.1. Vacant positions were not being filled leading to the re-allocation of cases and causing increased caseloads.
 - 85.2. Insufficient investigators to deal with the volume of work.
 - 85.3. Capacity challenges were not taken into consideration when planning, setting targets and deadlines.

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- 85.4. The 100% targets are not realistic, worsened by lack of resources, they are not achievable.
- 85.5. Targets are set very theoretically, yet the turnaround times depend on the contents of each file.
- 85.6. Audi letters are not always justified, and cause fear and intimidation.
86. This is the environment under which we work in the PPSA.
87. A copy of the report that was produced from this exercise is attached hereto marked "NN15".
88. I do not know whether or not the PP adopted the report, but we as EMs had to address those areas that fell under our responsibility. As far as I am aware, organisationally the only issue that was changed was to depart from the target to eradicate 100% of old cases due to the dependencies that affected the achievement of this target such lack of cooperation or delay from state organs to provide relevant information, and other evidence which may be required, all of which affect our performance.
- (ii) Working hours
89. Technically, the PPSA's working hours are between 08h00 – 16h30, with a one-hour lunch break. However, I have worked far beyond those hours, as have many other staff members, in an attempt to cope with the PPSA's working environment. I also accept that at my level, as an executive manager,

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I am expected to work well outside normal office hours, and have indeed done and continue to do so.

90. However, the working hours at the PPPSA became intolerable soon after I joined in 2019.
91. While, generally, it is commendable for civil servants to go above and beyond in discharging their duties, it must also be recognised that they are human beings, who must be treated reasonably, with the respect and dignity that is foundational to the PPSA.
92. Under the PP, we would work nights and into the early hours of the mornings, as well as on weekends; updating reports and spreadsheets for meetings; preparing presentations, and finalising investigation reports to ensure that deadlines were met, including that these reports are issued in time for a media briefing. The deadlines we worked day and night to achieve were often impossible, or close to impossible, to meet. These working hours were exacerbated by the PP's insistence of unreasonable deadlines in respect of addressing old cases.
93. I have on a number of occasions found myself leaving the office at midnight or at 04h00 in the morning in order to meet what I regarded to be unreasonable and near to impossible deadlines. This was true of a number of other employees. This had a dramatic impact on the morale, and physical health of staff.

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94. At the time I commenced this job I hit the ground running and never stopped. As I had worked in the organisation previously I was now coming in at a higher level, more senior to others that I had previously worked with and needed to set up some sort of a proper working relationship with them.
95. In the period March 2019 to 2020 I barely slept properly in an endeavour to meet impossible deadlines. In fact, I in turn found that the PRs themselves were not sleeping much, because they be available to me when I would contact them at odd hours of the night to deal with reports.
96. Covid-19 made it worse because Dashboard and other meetings would continue well into the evening, accommodated by remote communications.

E. IMPACT ON THE QUALITY OF REPORTS

97. Furthermore, the rapid production of reports and other investigation outcomes should not be unduly favoured at the expense of quality and integrity. Whatever system is in place, staff should never feel obliged to issue reports that are not ready, or in respect of investigations that have not been finalised.
98. The limited time and inadequate oversight materially impacted on the extensiveness of both the investigations and the quality of the work product delivered.

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99. Often, given the PP's emphasis and approach, investigators must work backwards from the arbitrarily determined date to produce a report. That may result in a tick box exercise, at the expense of quality, in order to comply with the unreasonable deadline and avoid consequence management.
100. At a human level, the combination of limited human resources; lack of support; working to impossible deadlines and lack of sleep is bound to impact adversely on the quality of the work produced.
101. Whilst structures were in place to check the quality of reports, these were not always effective. Some reports were submitted by investigators directly to the PP, bypassing the EMs and the usual quality checks.
102. The speed expected to turn around reports at all costs has undoubtedly compromised quality. This is one of the issues identified by the managers consulted during the engagements with investigators in February and March 2020, to which I have referred above, i.e., that the pursuit of quantity was having a negative effect on the quality of the work produced.
103. Even though EMs form part of quality assurance, however, at these meetings each EM focused on their area because there was not enough time to read reports or notices from other units. This rendered the quality assurance exercise, including at Full Bench, ineffective because EMs and even Legal Services, Knowledge Management would not have been afforded enough time to read reports and do the necessary research in order to make a meaningful contribution to the quality assurance exercise.

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F. LITIGATION

104. The PPSA's Litigation Strategy which came into effect in 2020 provides as follows, in relevant part:

2.9 The Executive Manager and the responsible investigator must properly peruse the review application and assist Legal Services in identifying or verifying facts alleged in the founding papers. The role of the investigation team is critical in the determination of the merits and on whether a matter should be opposed or not.

3.16. As stated above, the investigation branches must also play a key role in the preparation of the answering affidavit by properly identifying facts and law which is alleged to have been incorrectly applied by the Public Protector.

3.17. Their comments should be submitted to Legal Services within 20 days from receipt of the application so as to enable Legal Services to settle an answering affidavit within the prescribed timeframe, i.e. 30 days from filing of the record and/or supplementary affidavit by the applicants.

105. However, the involvement of EMs or investigators in matters and litigation when matters are taken on review is often limited to the compiling of the Rule 53 record. EMs are generally not consulted, nor are we involved in the drafting of affidavits to address the merits of the cases.


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I certify that the above signature is the true signature of the deponent and that she has acknowledged that she knows and understands the contents of this affidavit which affidavit was signed and sworn to before me in my presence at Pretoria on this 5th day of **SEPTEMBER 2022**, in accordance with Government Notice No R1258 dated 21 July 1972, as amended by Government Notice No R1648 dated 19 August 1977, as further amended by Government Notice No R1428 dated 11 July 1980, and by Government Notice No R774 of 23 April 1982.



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