



GRIEVANCE COMMUNIQUE

MANAGEMENT

Volume 1

Enhancing sound labour relations in the public service

Labour effectiveness is one of the critical elements contributing towards economic growth and stability of a country. Strained relations between the employer and labour can have unintended consequences affecting, not only service delivery, but other socio-economic issues, including negative impact on foreign investment.

For this reason it was imperative for the government to provide in the *Constitution of the Republic of South Africa, 1996*, for measures promoting sound labour relations. These are addressed in sections 23, 195 and 196. In section 196(4)(2)(f) the Constitution specifically provides that the Public Service Commission (PSC) is mandated to investigate grievances of employees in the Public Service concerning official acts or omissions, and recommend appropriate remedies.

In line with its mandate, the PSC has investigated and made recommendations in a number of areas to departments, both nationally and provincially.

In its investigation of grievances, the PSC observed the need to strengthen departmental capacity in grievance investigation. In addition to the workshops that the PSC continues to conduct in departments as per request, it has now developed the Grievance Newsletter,

which will be issued biannually, and quarterly in due course.

The Grievance Newsletter will provide labour relations practitioners and other stakeholders with examples of investigation reports, case law and information on recent labour related matters.

Public Service Commission



In this issue the Grievance Management Communique will address the following:

- Overview of the Grievance Rules
- Grievance Trends
- Managing grievances: the role of the Designated Employee
- Performance Management and Development System

Overview of the Grievance Rules

In terms of section 35(1) of the *Public Service Act*, 1994¹, an employee may, for the purpose of asserting his/her right to have a grievance concerning an official act or omission investigated and considered by the PSC, lodge the grievance with the relevant executive authority in the prescribed circumstances/ conditions/ manner laid down by the PSC's Grievance Rules. If that grievance is not resolved to the satisfaction of such an employee, the relevant executive authority shall submit the grievance to the PSC in the manner and time or within the period prescribed by the PSC.

Section 11 of the *Public Service Commission Act*, 1997², determines that -
“*The Commission may make rules which are not inconsistent with this Act or the Constitution as to—*

(a) *the investigation, monitoring and evaluation of those matters to which section 196(4) of the Constitution relates, the procedure to be followed at any such investigation*”

The PSC gazetted the Grievance Rules as the *Rules for dealing with the grievances of employees in the Public Service* in Government Gazette no 25209 on 23 July 2003. As the Senior Management Service falls outside the collective ambit, the PSC also developed *Rules for dealing with the grievances of members of the SMS in the Public Service* which were promulgated in Government Gazette No 33540 on 17 September 2010 and is included as Chapter Ten of the *Senior Management Service (SMS) Handbook*. During the course of investigating grievances, the PSC has identified several challenges that are faced by departments and employees in the implementation of the Grievance Rules, i.e. the lack of condonation of timeframes. The PSC is in the process of reviewing the Grievance Rules in order to address the challenges identified with the grievance process throughout the years.

Service departments, i.e the Correctional Services, Defence and the South African Police Services as well as Education, that fall outside the *Public Service Act*, 1994 have in terms of collective agreements within their departments, developed their own grievance rules. However, in terms of its constitutional mandate, the PSC has the power to investigate grievances that emanate from these sectors. The PSC will therefore, first allow the internal

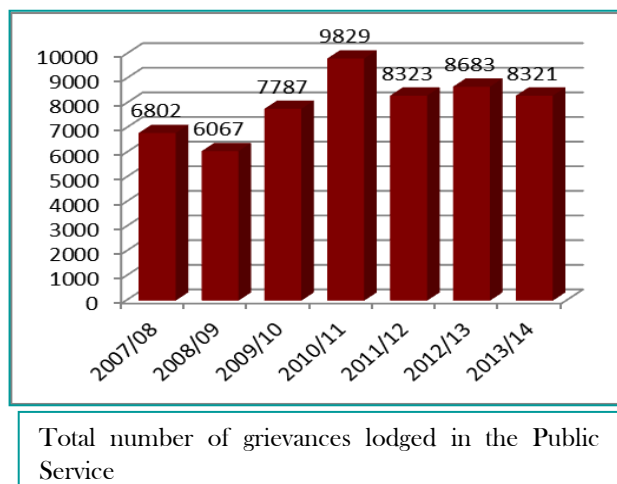
¹ Republic of South Africa: Public Service Act, Act no 35 of 1994 (as amended)

² Republic of South Africa: Public Service Commission Act, 1997

departmental procedure to run its course, before investigating grievances referred to the PSC for investigation in terms of the provisions of section 196(4)(f)(ii) of the *Constitution of the Republic of South Africa*, 1996.

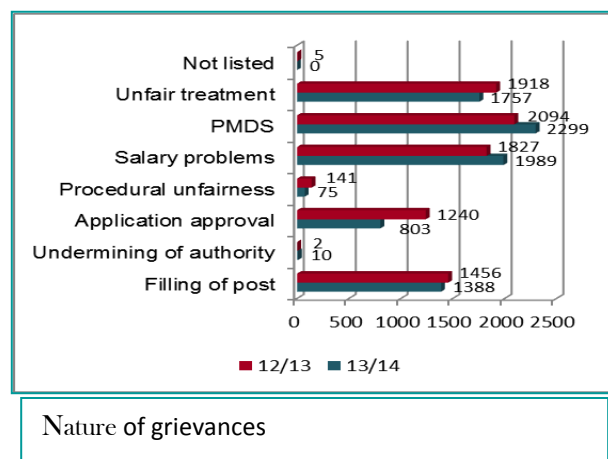
Grievance Trends

All national and provincial departments are required to report to the PSC on the resolution of grievances, on a six monthly basis. This reporting has enabled the PSC to determine a trend in respect of the number of grievances lodged. In the course of implementing its mandate, the PSC has observed that the number of grievances lodged each year throughout all departments in the Public Service, has been fluctuating, as illustrated in the graph below.



The number of grievances that relate to performance management, have consistently been the highest reported dissatisfaction. The following graph provides an overview in respect of the

nature of grievances for the 2012/13 and 2013/14 financial years.



Managing grievances: the role of the Designated Employee

The Grievance Rules, 2003 as well as Chapter Ten of the SMS Handbook, refer to the Designated Employee as the person with whom an aggrieved should lodge his/her grievance. In terms of rule 6(a) of Chapter Ten of the SMS Handbook, the role of the Designated Employee is underscored to the extent that a grievance that is not submitted to the Designated Employee, is not regarded as properly lodged. The Guidelines on Grievance Rules³ highlights the following as the tasks of the Designated Employee:

- Receives and expedite the resolution of a grievance.
- Verifies if the grievance complies with the prescribed timeframe for lodging, i.e. 90 days.

³ Republic of South Africa: Public Service Commission: Guidelines on new Grievance Rules. 12 August 2004

- Records and reports all grievances received to the Labour Relations component/HoD immediately and keeps them informed of progress made.
- Actively assists in removing any obstacles for the resolution of a grievance.
- Investigates the grievance, requests the necessary Managers/ Supervisors to assist with the resolution thereof. Drafts the necessary report/s, requests the HoD for a decision, and where necessary, informs the EA.
- At all times keeps the aggrieved informed, in writing, of the progress made towards finalising the grievance.
- Where necessary, informs an aggrieved of his or her rights in terms of the grievance rules.
- Ensures that a grievance is resolved within the time frames as contemplated in Rule F.8 of the Grievance Rules (30 working day period for non-SMS and 45 days for SMS members).

The Guidelines advise that a Designated Employee submits his/her report directly to the HoD and/or the EA.

A grievance that is not resolved on time, results in unhappy and unproductive employees

It is clear from the above how crucial the Designated Employee is in the management of grievances. However, it is important to note that the role of the Designated Employee is not to usurp the role of the manager. The management of

grievances remain a key responsibility of managers.

Performance management and development system

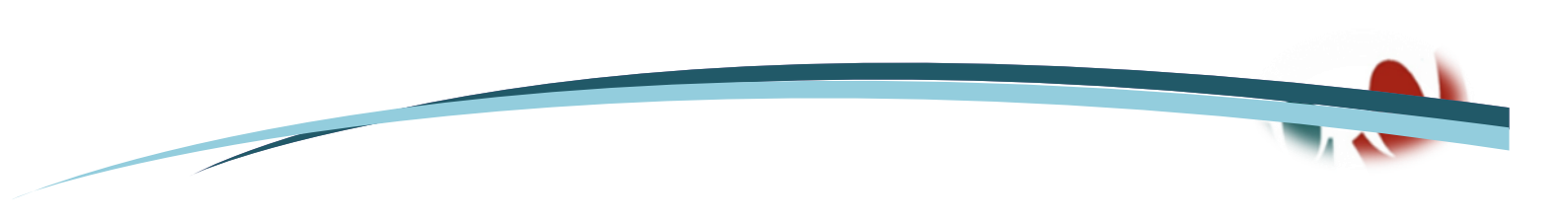
Introduction

The PSC has observed that the first thought that comes to mind when one mentions performance management and development, is the expectation to be awarded a performance bonus. However, performance management and development is much more than monetary awards. According to the White Paper on Human Resource Management⁴, performance management *“...is an ongoing process in which the employee and employer, together, strive constantly to improve the employee's individual performance and his or her contribution to the organisation's wider objectives.”* The performance assessment process is intended to identify strengths and weaknesses, and the interventions which are needed to deal with challenges, including the employee's future training needs and other developmental interventions such as career counseling, coaching and mentoring.

According to Dr Marko Saravanja⁵ *“Performance management has to be approached from an integrated*

⁴ Republic of South Africa. Department of Public Service and Administration. White Paper on Human Resource Management in the Public Service, Government Gazette No. 13594 of 31 December 1997.

⁵ 10 Reasons why performance management fails and how to remedy them. <http://regenesys.co.za>



perspective. Synergy has to be created between the performance management system and strategic planning, human resource management processes, organisational culture, structure and all other major organisational systems and processes. Individual, team and organisational strategic objectives must be harmonised. Without integration, no performance management system can succeed on its own, no matter how good the performance management system may be.”

Legislative framework

The Framework on Employee Performance Management and Development System (EPMDS), determined by the Minister of Public Service and Administration (MPSA) provides guidance to departments on the management of performance and development of employees on salary levels 2-12. Performance management and development in respect of Senior Management Service (SMS) members, is governed in terms of Chapter 4 of the SMS Handbook. However, departments are encouraged to draft internal policies on the management of performance assessment and development in line with their own unique requirements. The intention of the Newsletter is not to evaluate departments' internal policies, but to create awareness that policies should be in line with the directives of the Framework.

Of all the types of grievances lodged, grievances relating to performance management and development rate the highest. The causes for grievances relating to performance management and development, range from dissatisfactions about the changing of employees' scores by moderating committees, to failure by departments to implement merit-worthy ratings due to financial constraints and bias, prejudice and unfairness towards employees.

Stakeholder perceptions of PMDS challenges

During October 2014, the PSC held a roundtable discussion with representatives of Human Resource Management and Development (HRM&D) and Labour Relations components within selected departments to identify deficiencies in the management and implementation of the performance management and development system generally and to share information on better practices. Amongst others, the following were identified as contributing factors for the high level of grievances relating to performance management and development:

- Performance agreements place emphasis on activities and outputs rather than outcomes. Some of the performance agreements are finalised beyond the relevant financial year, thus raising concerns about their value as accountability mechanisms.

- Performance is not managed on a continuous basis and quarterly or bi-annual assessments do not take place as often as required. In instances where performance is reviewed, this is done haphazardly or takes place because of challenges that require urgent intervention.
- The PMDS is not implemented in a holistic manner, but in most instances utilised for compliance purposes only.
- Terms of reference for moderating committees are not clearly outlined in many departmental policies and there is no clarity on how disagreements on performance management and assessments should be dealt with.
- Departmental policies do not make provision for OSD performance assessments, hence the existing framework, which does not cater for the OSD framework is utilized and contested.
- Performance management is sometimes viewed as a function of HRM instead of an integral part of responsibilities of all line function managers.
- Employees approach the system with a ‘culture of entitlement for merit awards’, thus resulting in employees being mostly concerned with the final outcome of the assessment and whether it results in personal gain rather than whether positive progress was made towards achieving of organisational goals.

- There is improper planning and implementation of the 1.5% budget allocation, which can be addressed through training on implementation of PMDS.

The above is only a few of the issues highlighted at the roundtable discussion. The complete report is available on the PSC website ⁶

Findings of the PSC in respect of grievances relating to performance management and development

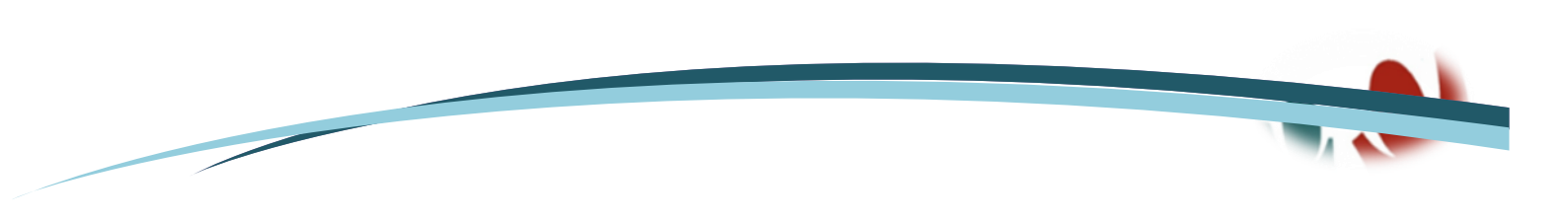
Not all the findings of the PSC can be discussed here, but the following serve as examples:

Moderating Committees

In considering grievances relating to performance management and development, the PSC found that most dissatisfactions of employees arise as a result of the downgrading of performance ratings during the moderation process. In terms of the Employee Performance Management and Development System Framework developed by the Department of Public Service and Administration⁷, the role of the Departmental Moderating Committee is “... to ensure that the annual performance assessment is done in a

⁶ Republic of South Africa. Public Service Commission. Report on the Roundtable Discussion on the Improper management of the Performance Management and Development System (PMDS) which leads to Grievances in the Public Service, 2014 (www.psc.gov.za/documents/reports/2015)

⁷ Republic of South Africa. Department of Public Service and Administration. Employee Performance Management and Development System. April 2007.



realistic, consistent and fair manner, to monitor the performance assessment process by obtaining an overall sense of whether norms and standards are being applied consistently and realistically to employees on the same level.”

In terms of the PMDS Framework, it is not the intention that the Moderating Committee should assess each employee's performance, but develop an overall view of the performance of employees in the Department. Where the Moderating Committee identifies deviations or discrepancies, these should be referred back to Directors and supervisors who had agreed on the ratings with their subordinates, together with reasons for the decision. This should be accompanied by a request for reconsideration of the rating.

Downgrading of scores

In those cases where the PSC found that the Moderating Committee downgraded the ratings of employees without referring the performance review back to the supervisor and employee for consideration, the PSC would recommend that the aggrieved employee be provided with an opportunity to submit additional motivation.

Where there is evidence of undue delay in finalising the performance review of an aggrieved, the PSC would recommend that the performance rating agreed upon between the employee and his/her supervisor should stand. This is evidence that the PSC regards the fair handling of

performance management and development as crucial to the maintenance of fair labour peace in the workplace.

The Bell Curve

The PSC further observed that departments struggle to implement the payment of performance bonuses within the 1,5% budget allocation. Moderating Committees of some departments reduce performance ratings of employees in an attempt to remain within the budget, and in some instances departments refuse or fail to pay bonuses due to lack of funding. The PSC has recommended in several cases it has dealt with that the departments should scale down the applicable percentages to be granted or set tighter standards for the granting of cash bonuses. The Labour Court has dealt with a similar matter in *Public Servants Association and others vs the Presidency, case no JR2219/11*. According to the judgement which was delivered on 05 March 2015, the court found the following:

“...It has to be noted that the duty to pay bonuses to those who qualified has its source in legislation, regulations and the policy of the second respondent.

In my view the excuse of non-payment of bonuses due to lack of funds is unsustainable. It is evident in this regard that the policy maker did anticipate the situation where there could be shortage of funds. The policy frame(sic)work provides a clear approach to be adopted by the DG, should such a situation arise. The

approach does not include a refusal to pay the bonuses to those who qualified on the basis of lack of funds. The powers given to the DG in the event of lack of funds is limited to having to scale down whatever the amount was to be paid to those who qualified or tightening the criteria for qualifying to receiving the bonus.

It accordingly follows that in refusing to pay the bonuses to those applicants who qualified the DG exercised the power he did not have. It also follows that the excuse of lack of funds is also not sustainable and can also not be a valid reason for not paying the bonuses. The decision is therefore illegal and thus susceptible to review. ”

In considering grievances relating to the awarding performance incentives, the PSC has also considered the fact that Departments do not always consider alternative measures of awarding employees for their performance. Departments are therefore, encouraged to develop a policy framework on the awarding of non-financial awards to deserving employees. This should not replace the PMDS policy of the department, or the awarding of financial incentives, but may, for example, assist in recognising employees whose performance has improved drastically.

It is trusted that Departments will benefit from the above information and will, where applicable, align their policies and procedures with the overall PMDS Framework.

Investigating PMDS grievance

Upon receipt of a PMDS grievance the investigator may, depending on the issue to be determined, obtain the following information for analysis:

- ✓ The Public Service Act
- ✓ The Public Service Regulations.
- ✓ Department of Public Service and Administration Framework (EPMDS)
- ✓ Department's PMDS Policy / SMS Handbook.
- ✓ Treasury Regulations.
- ✓ Departmental PMDS policy for employees translated in terms of the OSD
- ✓ Copy of the aggrieved's workplan / performance agreement for the financial year for which the aggrieved is complaining about.
- ✓ Copies of quarterly performance reviews and bi-annual performance assessment documents.
- ✓ Minutes of the Moderating Committee.
- ✓ Performance assessment feedback letter to the aggrieved.
- ✓ Minutes of the Grievance Hearing Committee, if the Department's PMDS Policy provides for such.
- ✓ Minutes of the Grievance Appeal Committee, if the Department's PMDS Policy provides for such.
- ✓ Proof of steps taken to remain within the allocated budget.
- ✓ Memorandum / submission requesting approval of the Minister to exceed the 1, 5% budget allocated for

- 
- performance assessments.
 - ✓ Case law on PMDS

The investigator may also conduct interviews with relevant parties in order to obtain any further clarity required.

During the course of investigation the investigator can also make observations on the general compliance with the PMDS framework and Policy by the department; and make proper recommendations to address any non-compliance or defect identified in the process, policy or framework.

The checklist attached at Annexure A may also assist investigators of PMDS grievances.

Next issue

The next volumes of the Communique will address challenges in the implementation of Temporary Incapacity Leave, appointment in acting capacity and the payment of acting allowances and relevant caselaw, and other issues as will be proposed by employees, practitioners and interested parties.

Invitation for inputs

Labour relations practitioners and other interested parties, are invited to comment on the articles and topics of interest that need discussion in the Newsletter,

provide input and/or newsworthy articles. Inputs should preferably not exceed two pages. Inputs can be forwarded to ThomasL@opsc.gov.za or MtengoH@opsc.gov.za.

ANNEXURE A

CHECK LIST FOR PERFORMANCE ASSESSMENT

Compulsory	Optional
Departmental Policy on Performance Management Development System (PMDS): <ul style="list-style-type: none"> Salary levels 1- 12 Employees falling under an OSD 	
Delegations (in terms of Paragraph B.2 of Chapter 1, Part II of the Public Service Regulations (PSR))	
Job description	
Workplan/Performance agreement of employee: <ul style="list-style-type: none"> Does it reflect the strategic/operational plan of the component? Is it signed and dated by the employee? Does the date of signing fall within the period prescribed by the policy? Is it signed and dated by the supervisor and/or overseeing manager? 	<ul style="list-style-type: none"> Do the KRAs on the workplan reflect the activities, outputs and resources? Are the outputs measureable? Does the workplan provide for at least 5 Generic Assessment Factors (GAFs) for the employee? Is the total of the weighting equal to 100% Does the workplan include a PDP?
Performance Review: <ul style="list-style-type: none"> Does the performance assessment correspond with the workplan/performance agreement? Were performance reviews conducted according to the Departmental policy? Were performance reviews conducted quarterly? Does the performance assessment reflect the discussion between the employee and supervisor on the performance of the employee? Does the performance assessment reflect the scores/rating allocated by the employee and those of the supervisor? Does the scores/rating comply with the rating instrument as provided for in the Departmental policy? If the performance assessment reflects that the employee did not agree with the scoring by the supervisor, is there proof that the matter was escalated to the overseeing supervisor/manager? Was the employee provided with an opportunity to provide motivation for the disagreement, if a dispute was raised? 	<ul style="list-style-type: none"> Is the EPMIS calculator completed and attached? Do the scores on the EPMIS calculator correspond with the final scores on the assessment? Proof of continuous assessment of the employee If performance is markedly below satisfactory, is there a performance plan in place?
Performance Moderation: <ul style="list-style-type: none"> Does the Departmental policy provide for the establishment of a Moderation Committee (MC)? Are the functions of the MC clearly stipulated in the Departmental Policy? Does the Departmental policy provide for the 	

establishment of an Intermediate Review Committee (IRC)?

- Is there any provision for the changing of ratings/scores by the IRC?
- Is there any provision for referring amendments/changing of the ratings back to the supervisor and/or employee?
- Is there any provision for the MC to accept the amendments of the ratings by the IRC if the aggrieved employee does not agree?
- Does the Departmental Policy provide for the establishment of a Departmental Moderation Committee (DMC)?
- Are the functions of the DMC clearly stipulated?
- Is there provision for the DMC to refer a rating back to the supervisor, if any deviations/discrepancies are identified?
- Are the recommendations by the DMC in compliance with the ratings allocated to employees?
- Does the Departmental Policy provide for the establishment of an Assessment Appeal Panel (AAP)?
- Are the functions of the AAP clearly stipulated?

Performance management of SMS members dealt with in terms of Chapter 4 of the SMS Handbook

Job description of the member

PA of the member:

- | | |
|--|--|
| <ul style="list-style-type: none"> • Does it reflect the strategic/operational plan of the component/Department? • Did the member enter into a PA by no later than 31 May • If newly appointed, was the PA entered into within the first three months of appointment? • Is it signed and dated by the member? • Is it signed and dated by the supervisor and/or overseeing manager? • Was it submitted before the prescribed due date? | <ul style="list-style-type: none"> • Is the PA of the member in line with Chapter 4 of the SMS handbook in that it reflects the 8 Batho Pele principles? • Does it contain KRAs, their weighting and scoring? • Does it contain CMCs, their weighting and scoring? • Does it provide for dispute resolution? • Is the PDP attached? • Does it reflect 2 dates for performance review (on 6 monthly basis)? |
|--|--|

Performance review

- Were performance reviews conducted as per the



dates on the PA?

- Did a minimum of two formal reviews take place during the course of the year?
- Does the performance assessment reflect the discussion between the member and supervisor on the performance of the member?

Performance moderation

- In cases where the MC identified any deviation (non agreement on scores), was the performance review form returned to the supervisor together with a reason why the issue is unacceptable to the moderating committee?
- Was the referral to the supervisor accompanied by a request for review.
- Minutes of the MC should provide detailed information

Corrective measures in case of poor or non performance

- Is there proof that poor or non-performance is addressed in terms of the SMS Handbook?

Recording of performance appraisals:

- Does the Department have proper systems in place for the recording of performance appraisals?
- Does the system reflect all results of performance reviews and annual appraisals, including discussions, as well as counselling provided;
- Does the system reflect all performance related pay and rewards given to the member year on year, indicating the level of performance being rewarded and the nature of the reward?
- Does the system reflect all disputes that had to be resolved?
- The record must include any disagreements voiced by the member regarding any aspect of the assessment and how this was resolved.