

PULSE

OF THE PUBLIC SERVICE

PUBLIC SERVICE COMMISSION QUARTERLY BULLETIN VOLUME 14

01 JULY TO 30 SEPTEMBER 2020



Custodian of Good Governance

ETHICS IS ABOUT CHARACTER, NOT RULES

NON-PAYMENT OF GOVERNMENT SUPPLIERS

CREATING A CONDUCTIVE WORKING ENVIRONMENT WHILE NAVIGATING THE CHALLENGES OF COVID-19

NATIONAL ANTI-CORRUPTION HOTLINE 0800 701 701



CONSTITUTIONAL MANDATE

The PSC derives its mandate from sections 195 and 196 of the Constitution, 1996.

The PSC is tasked and empowered to, amongst others, investigate, monitor, and evaluate the organisation and administration of the Public Service.

This mandate also entails the evaluation of achievements, or lack thereof of Government programmes. The PSC also has an obligation to propose measures that would ensure effective and efficient performance within the Public Service and to promote values and principles of public administration as set out in the Constitution, throughout the Public Service.

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PUBLIC SERVICE
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1. INTRODUCTION

This edition of the Pulse of the Public Service covers the period 01 June to 30 September 2020 which is the second quarter of the 2020/21 Financial Year. It focuses on governance matters in the Public Service including amongst others, service delivery challenges as a results of remote working, matters relating to ethics, non-payment of government suppliers within 30 days and overall number of complaints and grievances handle by the PSC up to 30 September 2020.

During his presentation to Parliament on the 2020 Medium Term Budget Policy Statement, Minister Tito Mboweni mentioned that the country's fiscus is constrained. He mentioned that over the past five years, the public sector employee compensation grew by 7.2 percent on average – well above inflation and that in the next five years, it will need to grow much slower. Whilst the PSC acknowledges that the country's fiscus is constrained and public sector wage bill should be stabilized, it hopes that such a move will not compromise the delivery of services to the people of South Africa. The PSC also call upon the Unions and Government to find a middle ground on this particular matter.

The PSC has noted with appreciation the commitment and hard work demonstrated by public servants, particularly health workers, since the outbreak of the Coronavirus (COVID-19) pandemic. The PSC has also noted the speed at which Personal Protective Equipment (PPEs) were procured by various government departments. However, the emergency procurement of the PPEs also presented an opportunity for some public servants to blatantly disregard regulations. This has led to some key government officials being investigated whilst others resigned in order to avoid misconduct charges. The PSC appreciate collaborations amongst the law enforcement agencies to investigate these incidences of corruption. The allegations of corruption whether perceived or real amongst public servants, continues to escalate.

The PSC has also observed that when wrongdoings/irregularities occurs in public administration, the employees involved allege that they acted on unlawful instructions from Executive Authorities (EAs) or senior managers. To this end, in September 2020, the PSC issued a circular to all EAs, Heads of Department and Government Components to advise employees and EAs on the mechanisms that are provided for in prescripts regarding the management of unlawful instructions.

As part of the Public Service Month programme, the PSC hosted a Webinar on the “State of the Public Service” on 01 October. The Webinar covered three main areas, namely (1) the findings from the latest State of the Public Service Report (SOPS); (2) the launch of a Guide on the Constitutional Values and Principles; and (3) the lessons learnt from the COVID-19 Pandemic in the Public Service. The SOPS builds on the diagnosis of the state of the public service in the National Development Plan and takes cognisance of various reports and comment on public service and administration, such as the 25 Year Review Report. Similarly, it provides an ongoing diagnosis of the state of the Public Service, including recommendations on how public administration practice should change to better reflect the desired and ideal Public Service. During the discussions, the PSC reiterated the importance of understanding the practical implementation of the issued circular on unlawful instructions.

In its efforts to comprehensively understand the causal factors of the non-payment of suppliers by Government, the PSC hosted a Virtual Roundtable on the “Efficient, Economic and Effective use of resources in the Procurement Environment” on 28 October.

Generally, allegations of corruption calls into question the embedment of Constitutional Values and Principles (CVPs) amongst public servants, in particular the principle relating to a high standard of professional ethics and economical use of resources. In this regard, the PSC will continue to promote the CVPs throughout the Public Service with the aim to change the mind-set and behaviour of public servants.

The PSC encourage members of the public to report any wrongdoing or corrupt activities through the National Anti-Corruption Hotline (NACH) on 0800 701 701.

As the custodian of good governance, the PSC received a clean audit for the 2019/20 financial year. During the same financial year, the PSC paid service providers within 7 days upon receipt of the invoice. The clean audit is an affirmation that the Organisation uses state resources ethically and with integrity.

2. ETHICS IS ABOUT CHARACTER, NOT RULES

The foundational goal of Public Service is development. As such, the ethics of professionalism, transparency, accountability and responsibility are the very soul of development. For that reason, the Public Service should never be divorced from these ethics and should always be values-driven rather than only rules-driven. Non-compliance with rules is not being advocated. A shift to a values-driven Public Service will require amendment of the rules to make them more flexible/agile and allow for discretion to respond to citizens' needs.

Public servants' behaviour cannot be governed by rules alone. It is incumbent upon the individual to appreciate that ethics and professional conduct that are demanded of them by virtue of being a public servant, weighs more heavily than just compliance with the rules.

The fundamental values that underpin governance and administration as embedded in the Constitution include among others, ethical conduct, respect, human dignity, social justice and equality.

South Africa faces the challenge of widespread corruption in its Public Service. Corruption acutely undermines the rule of law and principles and values that ought to govern public administration. One of the challenges that cause corruption in government includes, but not limited to, public servants who conduct business with the state. This issue undermines the principles of good governance and corrodes the moral fiber of society.

In many instances service delivery is affected negatively because companies that are appointed to render services are not appointed on the basis of merit, meaning that companies with close proximity to those in power (executive authorities and senior public servants) are prioritized. These types of practices elevate cronyism above requirements that should be met and this leads to poor service delivery.

In order to deal with some of these challenges, the government in 2016 reviewed the Public Service Regulations to among other things, prohibit public servants from doing business with the State – be it in a personal capacity or as a director of a company that conducts business with the State. This is now deemed a criminal offence, for which an individual, if found guilty, can be liable for a fine or imprisonment for up to five years or both.

In addition to the above prescripts, the government has, in 2001, introduced the Financial Disclosure Framework (FDF) so that all members of the Senior Management Service (SMS) declare all their financial interests. The Regulations extended the categories of employees who are required to declare their financial interests to middle managers, employees in Supply Chain Management and those working in Finance units.

There are several instances where public servants have been reportedly found doing business with the government. For example, the Minister for Public Works and Infrastructure (MPWI) reported on SABC news in January 2020 that 3700 employees in the department were found doing business with the State. Furthermore, the Minister for Public Service and Administration (MPSA), Mr Senzo Mchunu made a commitment to take action against 1544 public servants who were doing business with the State. Looking at these dealings, it is evident that there are loopholes in government systems that are exploited by public servants to do business with the state without being detected during the early stages of tendering. In investigating this, the PSC has found out that government systems such as the Central Supplier Database of National Treasury (NT), the systems of the Companies and Intellectual Property Commission, the Personnel and Salary System (Persal), the Basic Accounting System, Home Affairs and the South African Revenue Service, work in silos and the systems need to be synchronized in order to stop this unethical and corrupt conduct.

The PSC is encouraged by the actions of the Ministers of the Public Service and Administration, Police, and Justice and Correctional Services who in July 2020, drafted a memorandum of understanding to better coordinate efforts that will lead to the investigation and prosecution of employees found to be conducting business with the State. The PSC will monitor the outcomes of reported investigations and prosecutions of the offenders.

In its evaluations, the PSC is increasingly finding that the public service management culture is characterised by a rigid pursuit of prescripts, sometimes at the expense of legitimate basic service delivery needs. It is incumbent upon every public servant to claim the high moral ground in adhering to and upholding a universally recognized standard of ethics, justice and goodness, to be civil and to act humanely towards fellow public servants, stakeholders and citizens alike.

A robotic approach to compliance renders public administration rigid, utterly stiff and non-responsive to the needs of the people, with no room for innovation, questioning the intelligence of the bureaucracy. This entanglement with what is supposed to be guidelines in the form of rules, suffocate personal touch and service that is within the law and makes discretion the enemy of the state. The spirit of the law propels us to do what is right; it is not meant to be used as a tool to stifle people.

The beginning of a good story to tell should start with a robust, transparent and effective recruitment process that will make the public service a career of choice with a specific ethos derived from the Constitution. Strengthening the role of the PSC in promoting norms and standards and monitoring the recruitment process can play a key role in this.

The perception that citizens have of government and the public service can be taken to a higher trajectory only if the values in the Constitution are written on the hearts of all public servants.

3. CREATING A CONDUCTIVE WORKING ENVIRONMENT WHILE NAVIGATING THE CHALLENGES OF COVID-19

The Public Service is the largest employer in South Africa and it is crucial that public servants perform their duties diligently at all times. At the same time the Public Service is required to ensure the health, safety and welfare of employees at all work locations, including what would be considered off site workspace locations. Employees are also required to take responsible care of themselves and others in the work location while performing work related tasks.

In response to the COVID-19 pandemic, the South African government declared a National State of Disaster on 15 March 2020, through issuing Government Notice No. R. 313 of 15 March 2020. Consequently, the country went into a lockdown at midnight on 26 March 2020. The alert level 5 and 4 lockdown regulations were more restrictive, but the restrictions were gradually uplifted when the country progress to different levels. South Africa has since moved to alert level 1 during September 2020 with less restrictions.

The 'new normal' and employment relations

The COVID-19 Regulations issued by the government have required persons to work from home, where they can. Though the entire country is currently in level 1, there groups of employees, especially those who are at the high risk of contracting the virus and those who work in physical environment that are not conductance, who find themselves still being required to rotate their physical presence at the employer's premises whilst they work from home – notwithstanding the fact that not all affected employees have the necessary tools of trade to be able to work from home.

In spite of the onset of alert level 1, in October 2020 government says there may be a time when different provinces are placed under different lockdown levels based on the COVID-19 infections in the particular province.¹.

The key question is whether a person's home becomes a "workplace" if an employee performs his/her services from their home/residence. This has important consequences under South Africa's Health and Safety Laws, and for purposes of compensation for occupational injuries and diseases.² It is likely that employees will continue working from home in compliance with the COVID-19 Regulations issued in terms of the Disaster Management Act ("*Covid Regulations*"). In addition, working from home during the hard lockdown, and under Alert Level 4, has demonstrated that the drive towards flexible or agile working arrangements has merit, and working from home may become more common, even after the threat of COVID-19 has been addressed³. Is the home now classified as a workplace? The term "workplace" is defined in Section 1 of the Occupational Health and Safety Act (OHSA) to mean "... any premises or place where a person performs work in the course of his (or her) employment". The term "work" means "... work as an employee or as a self-employed person, and for such purpose an employee is deemed to be at work during the time that he/she is in the course of his/her employment ...". Employees that perform work, as defined, at home, will in most instances, be acting in the course and scope of their employment, and therefore their home/residence constitutes a "workplace" as defined in the OHSA. The term "employer" is defined in Section 1 of the OHSA to mean any person who employs or provides work for any person and remunerates that person. The term "employee" is defined in Section 1 of the OHSA to mean any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration, or who works under the direction or supervision of an employer or any other person. Persons who are employed by an employer, and work from home/residence, are employees of their employer. Equipment such as computers, laptops, printers, etc. would constitute "*machinery*".

The employment relationship is built on trust and the rights of both parties to the relationship. Employees and employers have very specific rights in terms of common law and labour legislation. Balancing these rights is extremely important and pivotal to a fair and successful employment relationship. It must always be remembered that with every right there is a reciprocal obligation. In other words the rights of the employee are the obligations of the employer; and the rights of the employer are the obligations of the employee⁴.

General employee rights

Employees have the following rights:

- not to be unfairly dismissed or discriminated against
- to be provided with appropriate resources and equipment
- to have safe working conditions
- to receive the agreed remuneration on the agreed date and time
- to receive fair labour practices⁵
- to be treated with dignity and respect
- to non-victimisation in claiming rights and using procedures
- to leave benefits and other basic conditions of employment as stipulated in the BCEA.

1 <https://www.sabcnews.com/sabcnews/infographic-south-africas-lockdown-level-5432-and-1/>

2 SOUTH AFRICAN HEALTH AND SAFETY LAWS AND COMPENSATION LAWS: In South Africa, a distinction is made between the provisions of Health and safety Laws, which regulate health and safety in the workplace, namely the Occupational Health and Safety Act, No. 85 of 1993 ("OHSA") and the Mine Health and Safety Act, No. 29 of 1996 ("MHSA"), and compensation that becomes payable in the event that an employee sustains an occupational injury or contracts an occupational disease which is compensatable. All injuries (non-fatal and fatal injuries) are compensatable under the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993 ("COIDA"). With regard to the Compensation Laws, COIDA applies to all employers, regardless of the industry. Occupational diseases are also compensatable under COIDA, and occupationally-acquired COVID-19, is a compensatable disease under COIDA.

3 <https://www.golegal.co.za/working-from-home-workplace/>

4 Employee & Employer Rights, André Claassen the South African Labour guide <https://www.labourguide.co.za/>

5 Section 23 of the Constitution of the Republic of South Africa, Act 108 of 1996

Those are some of the general rights of employees, however looking specifically at safe working conditions in ***Media 24 Ltd & another v Grobler [2005] 7 BALLR 649 (SCA)***, the Supreme Court of Appeal found that there was a negligent breach by the employer of a legal duty to its employees to create and maintain a working environment in which, amongst other things, its employees were not sexually harassed by other employees in their working environment. It was also found that an employer has a common law duty to its employees to take reasonable care for their safety and also found that this duty cannot be confined to an obligation to take reasonable steps to protect employees only from physical harm caused by what may be called physical hazards.

In terms of section 78 of the BCEA, the employee is entitled to legal rights which include the rights to: (a) *make a complaint to a trade union representative, a trade union official, or a Labour inspector concerning any alleged failure or refusal by an employer to comply with this act;* (b) *discuss his or her conditions of employment with his or her fellow employees, his or her employer, or any other person;* (c) *refuse to comply with an instruction that is contrary to this act or any sectoral determination;* (d) *refuse to agree to any term or conditions of employment that is contrary to this act or any sectoral determination;* (e) *inspect any record kept in terms of this act that relates to the employment of that employee;* (f) *participate in proceedings in terms of this act;* and (g) *request a trade union representative order a Labour inspector to inspect any record in terms of this act and that relates to the employment of that employee.*

General Employer rights:

Employers have the following rights:

- to expect employees to render the agreed services on the agreed days and times;
- to expect employees to perform under his authorisation;
- to carry out all work instructions and obey all reasonable and lawful instructions issued);
- to expect employees to display good behaviour in the workplace (to comply with company policy and procedure, and to comply with company Disciplinary Code and Procedure, and to behave in the workplace in a manner acceptable in the norms of society);
- to expect employees to act in good faith, be loyal, and have the best interests of the employer at heart at all times;
- to expect employees to follow workplace rules, company policies and procedures and work performance standards;
- to expect employees to strive honestly toward work objectives, and to expect employees to adhere to product specifications and quality standards;
- to expect employees to use the employer's prescribed resources and methods; and
- to expect employees to report any dishonest or unlawful practices in the workplace, including any breaches.

Acting in good faith towards the employer

In situations where the employer entrusts an employee to work remotely, the reciprocal obligation on the part of the employee is to do so in good faith. This means the employee has the responsibility and duty to report for duty by making contact with his line manager and remaining in constant communication with him/her. Failure to do so may warrant the negative inference being drawn that the employee had deliberately absented him/herself without the requisite permission. Once an employee fails to make the necessary contact with the employer the onus lays upon him/her to prove that the absence had a valid reason which would reciprocate the necessary permission. There is no outright duty placed on the employer to initiate contact with the employee where he/she is expected to report for duty.

The past behavioural patterns of the employee become of somewhat significance whereby it is clear that the employee has a track record of absencing themselves without the necessary permission, these factors may be taken into consideration in assessing whether the legal labour principle entrenched in the South African Labour Law becomes applicable, the principle of *'no work no pay.'*

The *'no work no pay'* principle is the reciprocal tool the employer has at its disposal for employees who wish to 'play tricks' on the employer's time. This is used when the employee does not respect the employer's time to produce whatever products it needs to and does not seek the requisite permission to be absent. South African Labour Law is fair to both the employer and the employee hence it allows the employer to halt remuneration from an employee who had not rendered a service. This principle must not be mistaken with the deduction of overpayments made to the salary, in this scenario the salary itself has not become due and payable in law.

Responsibility of Human Resources

The immediate supervisor has the responsibility to make contact with the missing employee after a reasonable period. Should there be no response from the employee, after several attempts, the line manager must escalate the matter to the Human Resource (HR) Unit for further investigation. The line manager has the prerogative to deal with the absence where it is for a trivial or short period, when it extends beyond a two-week period, it surpasses the informal discussion and needs to take a more stringent approach which requires the involvement of HR. The HR unit must be requested to assist and establish the whereabouts of the employee through, telephone calls, home visit and registered postage. The HR unit has the responsibility where the absence is excessive to institute a formal enquiry into the nature and reason for the absence. In the public service, the employee may subject themselves to automatic termination of employment by operation of the law where the employee absents him/herself for one calendar month. This termination of the employment relations occurs *ex lege* and may only be reversed by a court of law. The Labour Relations Act allows for three grounds upon which employment may be terminated and that is for reasons of misconduct, incapacity, or through operational requirements.

Employees need to understand that absence from the workplace without permission, needless to say the reason, is misconduct. Employees often confuse having a valid reason to having permission. You may have a valid reason but not obtained the necessary permission from the employer who pays you to be on duty.

4. NON-PAYMENT OF GOVERNMENT SUPPLIERS

The Virtual Roundtable on the "Efficient, Economic and Effective use of resources in the Procurement Environment" aimed to understand why despite extensive regulatory and policy measures in place for public finances and procurement and the prevention of corruption in the Public Service, significant challenges persist. This Roundtable also created a platform to deliberate on the implementation of the constitutional principle of Efficient, Effective and Economic use of resources in the procurement space. Attention was drawn to the challenges experienced during COVID-19 within the procurement environment and the event provided an opportunity to tackle the challenges related to the continued failure of government departments to pay suppliers on time.

The participants included the Standing Committee on Appropriations (SCOA), the Delegation of the EU to the RSA, National Treasury, national and provincial Chief Financial Officers (CFOs) and provincial Accountant Generals, who shared experiences on the extent of non-payment of suppliers, during the COVID-19 pandemic in the procurement environment and measures put in place to improve the situation. The deliberation highlighted key areas to be addressed such as a) ethical leadership and integrity in dealing with procurement related matters, including follow-through with consequence management strategies, b) lack of supply chain management qualifications, these qualifications need to be embedded as this function requires the implementation of approximately 123 regulations and c) the unevenness and challenges related to technological infrastructure.

Based on discussion and the current economic climate of reprioritisation of funds, it is time to assess the systems available and offered by the State Information Technology Agency (SITA) to Government to determine its effectiveness, efficiency and value-added ICT service to the public sector in a secure, cost-effective and integrated manner, contributing to citizen convenience.

The PSC has been monitoring the 30-day payment of suppliers by departments for the past three years to understand the challenges that the departments are faced with in relations to payments within the stipulated time. Although there have been improvements, certain departments continue to default on the matter. Table 1 and 2 below depicts the latest information on the non-payment of suppliers for both national and provincial departments for the second quarter of the 2020/21 financial year (1 July to 30 September), as submitted to National Treasury (NT):

Table 1: Non-payment of Suppliers by National Departments.

National Department	July' 2020		August' 2020		September 2020	
	No of invoices	Value of invoices	No of invoices	Value of invoices	No of invoices	Value of invoices
Cooperative Governance	0	R 0	53	R 413,262	44	R 190,153
Home Affairs	5	R 29,831	8	R 20,186	8	R 90,604
International Relations	0	R 0	1	R 2,665,623	1	R 2,665,623
Public Works and Infrastructure (DPW&I)	28	R 4,727,938	24	R 475,278	6	R 456,111
DPWI's PMTE	327	R 36,136,647	177	R 29,006	122	R 40,020,441
Statistics South Africa	30	R 508,087	3	R 24,969	0	R 0
Social Development	0	R 0	9	R 2,018,012	8	R 2,003,352
Women, Youth and Persons with Disabilities	1	R 1,712,016	1	R 1,712,016	1	R 1,712,016
Civilian Secretariat for the Police Service						
Office of the Chief Justice	2	R 711	7	R 151,471	0	R 0
Police	2	R 2,012	1	R 512	1	R 512
Agriculture, Land Reform and Rural Dev						
Environment, Forestry and Fisheries						
Human Settlements	0	R 0	0	R 0	10	R 540,508
Mineral Resources and Energy						
Water and Sanitation (DWS)	125	R 188,359,967	132	R 523,683,903	198	R 543,783 779
DWS Trading Entity	455	R 2,851,359	443	R 1,124,212	443	R 1,054,471

Source: National Treasury, Office of the Accountant-General. Exception Reports July-September 2020

Denotes non-submission of the relevant report by the relevant department for the month.

Table 1 shows improvements in the payment of suppliers for quarter 2 (Sept 2020) in comparison with quarter 1 (June 2020) of the 2020/21 financial year, such as:

- a) Cooperative Governance with a reduction in the related cost from R 1, 024, 020 in quarter 1 to R 190 153 in quarter 2, despite the increase in the number of invoices not paid from 9 to 44 in quarter 2.
- b) Public Works and Infrastructure including PMTE with a reduction in the related cost from R 1, 493, 097 for 17 invoices in quarter 1 to R 456 111 for 6 invoices in quarter 2. This includes the related cost for the PMTE from R 63, 480, 046 for 1629 invoices in quarter 1 to R 40, 020, 441 for 122 invoices in quarter 2. The PSC acknowledges that the costs are still high and efforts executed by the Department should be intensified.
- c) Police has shown a steady decline over the past 6 months with commendable results in quarter 2 at R 512 for 1 invoice.

There are still some national departments that struggle with the payment of suppliers within the stipulated 30 days, such as:

- a) Water and Sanitation (DWS), including Trading Entity, had 641 invoices at the cost of R 544,838,250 in quarter 2 in comparison with the Department's 136 invoices at a cost of R506,584,535 for May 2020, whilst the Trading Entity had 665 invoices at a cost of R 991,931 at the end of quarter 1.
- b) Home Affairs reflects a notable increase in the related cost from R 11, 318 for 3 invoices in quarter 1 to R 90 604 for 8 invoices in quarter 2.
- c) Social Development shows a significant increase in the related cost from R 56, 749 for 1 invoice in quarter 1 to R 2, 003, 352 for 8 invoices in quarter 2.
- d) Women, Youth and Persons with disabilities' invoice of R 1,712,016 relates to lease billing for office accommodation from the DPWI for the 2011-2014 financial years and remains outstanding due to lack of funds. The Department agreed with DPWI to pay the amount owing over a period of time subject to availability of funds.

Newcomers to this narrative are departments of a) International Relations with the related cost of R 2, 665, 623 for 1 invoice in quarter 2, and b) Human Settlements with the related cost of R 540, 508 for 10 invoices in quarter 2.

Of concern to the PSC are the departments such as (a) Civilian Secretariat for the Police Service, (b) Agriculture, Land Reform and Rural Development, (c) Environment, Forestry and Fisheries, and (d) Mineral Resources and Energy who, despite the regulatory requirements, are still not submitting the required information to NT on time. This shows a lack of accountability and consequence management within these departments.

Concerning the provinces, the Eastern Cape, Gauteng, North West and Northern Cape have the highest number of invoices older than 30 days not paid as at the end of the quarter 2 for the 2020/21 financial year.

Table 2: Non-payment of Suppliers by Provincial Government

Provinces	July' 2020		August' 2020		September 2020	
	No of invoices	Amount of invoices	No of invoices	Amount of invoices	No of invoices	Amount of invoices
Eastern Cape	12,513	R 2,046,606,213	9,706	R 1,963,241,571	11,184	R 2,072,962,044
Free State	1,049	R 128,709,272	1,126	R 118,321,564	1,142	R 98,651,875
Gauteng	3,415	R 483,721,049	2,243	R 620,059,409	518	R 516,788,117
KwaZulu-Natal	995	R 55,525,587	923	R 54,042,242	968	R 60,300,840
Limpopo	81	R 10,827,402	166	R 28,867,249	157	R 22,509,961

Provinces	July' 2020		August' 2020		September 2020	
	No of invoices	Amount of invoices	No of invoices	Amount of invoices	No of invoices	Amount of invoices
Mpumalanga	322	R 65,424,958	60	R 41,006,035	384	R 43,995,653
North West	4,244	R 381,081,059	2 866	R 314,044,524	2,283	R 254,228,609
Northern Cape	53	R 31,979,334	28,072	R 207,807,619	5,022	R 271,893,304
Western Cape	0	R 0	8	R 1,290,057	1	R 5,865

Source: National Treasury, Office of the Accountant-General. Exception Reports July-September 2020

Table 2 shows improvements in the payment of suppliers for quarter 2 (September 2020) in comparison with quarter 1 (June 2020) of the 2020/21 financial year, for example, the i) Free State, ii) Limpopo and the iii) North West provinces. However, the provincial departments remain with the highest number of invoices and related costs.

The increase in the number of complaints of non-payment from suppliers received by the PSC is indicative of the erosion of accountability in the public sector, which builds a strong case for the need to embed the CVPs.

5. ASSESSMENT OF SERVICE LEVELS OF EMERGENCY REPAIRS AT SCHOOLS IN THE WESTERN CAPE

The PSC assessed the Western Cape Education Department's (WCED) response rate to requests for emergency repairs at schools. The assessment emanated from media reports of failing infrastructure at schools in the Province. The objectives of the assessment was to, amongst others,

- i. Assess the effectiveness of the system dealing with emergency repairs;
- ii. Gain insight into the end-user experience of the system; and
- iii. Assess the effectiveness of the response by the WCED as perceived by principals.

A survey questionnaire was sent to 82 principals (both high and primary schools), across the eight educational districts, and in-depth interviews were also conducted with officials and principals.

The key findings of the study indicated that not all principals are familiar with the WCED's Standard Operating Procedures (SOP) for Emergency Maintenance in Schools, and that the majority of principals need to be re-acquainted with the policy. Furthermore, there should be an objective set of criteria to define what constitutes a pressing emergency. Such a distinction would separate routine maintenance requests from emergency repair requests.

Almost half of the sampled principals indicated that some of the emergency repairs requested were because of maintenance not being done in the first place. The lack of maintenance means that buildings are left to deteriorate to the point of it becoming a safety hazard.

Number of principals indicating that at least one request resulted from routine maintenance not being done

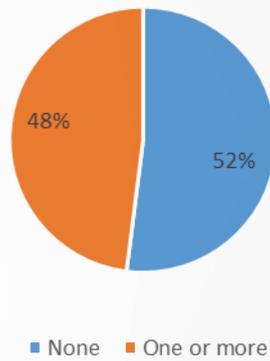


Figure 1: Number of Principals indicating that at least one request resulted from routine maintenance not being done

The PSC also found that many emergency repair requests were not responded to within the set time-frame as per the SOP. Consequently, the majority of repairs were only initiated long after what the standard requires. However, this excludes what the WCED and Department of Transport and Public Works (DTPW) refer to as ‘making safe’, which is an immediate action that is taken to ensure that the emergency hazard is neutralized.

Approximate number of days it took the WCED to make first contact with the school

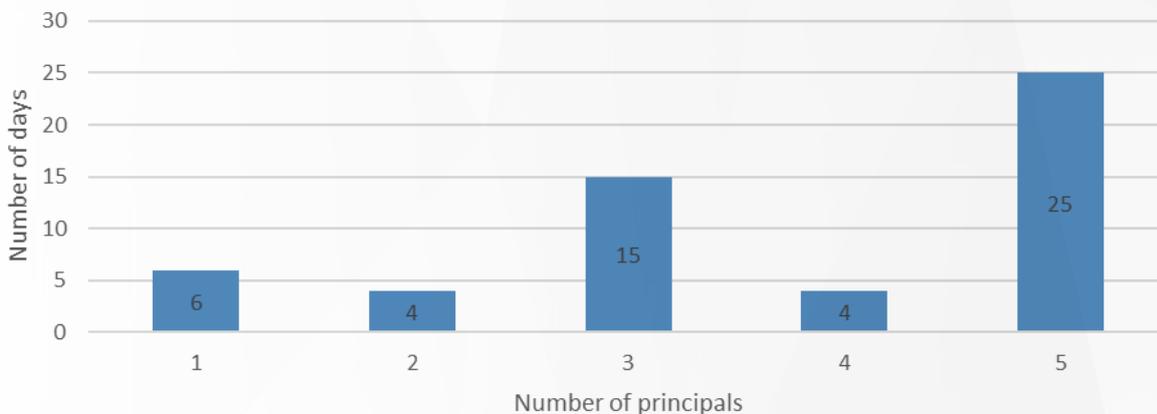


Figure 2: Approximate number of days it took the WCED to make first contact with the school

Most principals were satisfied with the level of communication received once the repairs were approved. However, some principals raised the issue of not being alerted when contractors are to be on site and were often surprised when the contractors arrived at the schools. In terms of satisfaction levels with the quality of repairs done, the majority of principals stated that they were fairly satisfied. However, 31% of the principals were completely dissatisfied.

Based on the findings, the PSC made the following recommendations:

- a. The concept of emergency repairs needs to be more detailed and specific criteria needs to be communicated to principals. The risk professionals should be engaged to produce a workable non-professional’s assessment tool that allows principals to objectively assess the emergency repair situation at their schools.

- b. The stipulated time-frame to undertake site inspections should be adhered to but most importantly, they should also be monitored for performance.
- c. There needs to be a specific and intentional role assigned to the principal during delivery of infrastructure. This role should include the ability of the principal to amongst others, oversee the repair work, interact with the contractor, raise issues of concern with the project manager, and very importantly, be able to express levels of satisfaction with the repair work that has a material impact as to whether the contractor is paid or not.
- d. For accountability purposes, principals are to be informed of the repair specifications (details of work to be done and materials to be used) before work commences, including the full value of the repair contract.
- e. The WCED must have a system that guarantees first contact with principals once an emergency repair has been logged, irrespective of the nature, extent and severity of the repair required.

The PSC hopes that the report should serve as part of the intelligence of the Department and should be used to improve the level of responsiveness to infrastructure failures that could very well result in the loss of life or serious harm to learners and educators.

6. OVERALL NUMBER OF GRIEVANCES HANDLED BY THE PSC UP TO 30 SEPTEMBER 2020

Grievance resolution is not an end in itself, it is a mechanism to address labour relations challenges as a result on the employer’s acts or omissions which have an actual or perceived negative impact on employees. Such acts may emanate from lack of or inconsistent implementation of applicable prescripts, strained working relations and delays in the implementation of agreed plans. Therefore, the PSC uses lessons from its investigation of referred grievances to address policy challenges and capacitate departments through engagements, workshops and the issuing of advisory notes, guidelines and circulars.

In term of grievance investigation, as reflected in **Table 3** below, up to the end of September 2020, the PSC had **353** grievances registered in its database, including 178 carried over from the previous financial year and 105 cases received between April and September 2020. Furthermore **Table 3** below reflects that the total number of grievances handled by the PSC up to the end of September 2020 increased by **82 (30%)** cases, as compared to **271** reported cases during the first quarter.

Table 3: The number of grievances handled by the PSC during the first and second quarter (Total numbers reflected are cumulative)

Grievances Received	1st Quarter (1 Apr - 30 Jun)	2nd Quarter (1 Jul -30 Sept)	Increase: number and %
Total number of grievances received	271	353	82 (30%)
Properly referred cases	213	283	70 (33%)
No jurisdiction/Not properly referred	58	70	12 (21%)

Of the **353** grievances, **70 (20%)** were not properly referred and **283 (80%)** were properly referred, thus suggesting that some stakeholders have still not familiarised themselves with the Grievance Rules and they are under extreme pressure to seek intervention from the PSC.

The grievances which were not properly referred are those that were simultaneously referred to the PSC and other structures such as bargaining councils, and those that were still not finalized in the departments. The **283** properly referred grievances are dealt with through investigation and mediation, of which the latter strategy is more effective in resolving grievances speedily whilst also capacitating departmental representatives and aggrieved employees. The properly referred grievances are broken down in figure 3- Location of properly referred grievance cases; figure 4- Status of properly referred grievances and figure 5- Types of properly referred grievances.

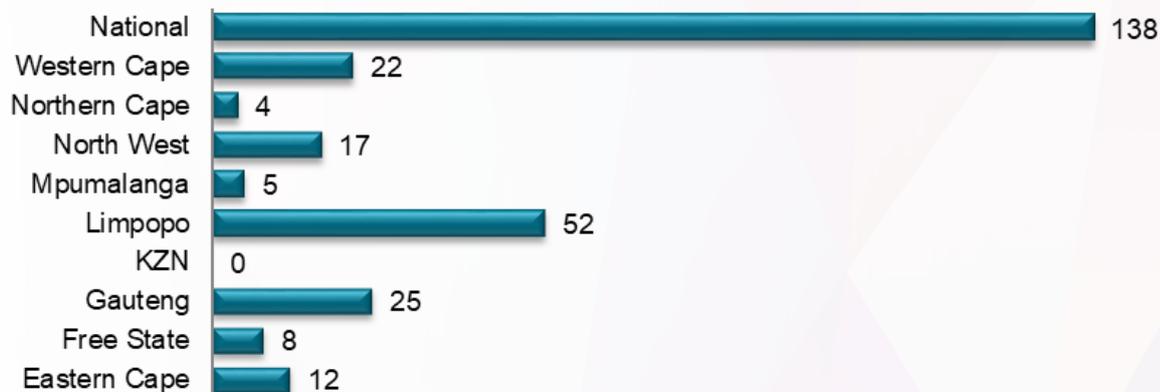


Figure 3: Location of properly referred grievance

The majority of the properly referred grievance cases are referred by national departments, hence they are located at the national PSC office, while 54 cases are located at the Limpopo and Gauteng provincial offices. The number of grievances referred national departments is comparatively high because each provinces has 12 to 14 provincial departments, whereas there are more than 50 national departments, of which some of those departments have thousands of employees and regional offices spread across the country.

As depicted in **Figure 4** (next page) **140** of the **283** properly referred cases were concluded by the end of September 2020, of which **119** of the concluded cases form part of the **178** grievances carried over from the 2019/2020 financial year. Many of the concluded cases were internally resolved after the intervention of the PSC. However, the other 65 cases went through a formal investigation process, resulting in **47** cases being found to be unsubstantiated, **17** cases being substantiated and 8 cases being partly Substantiated.

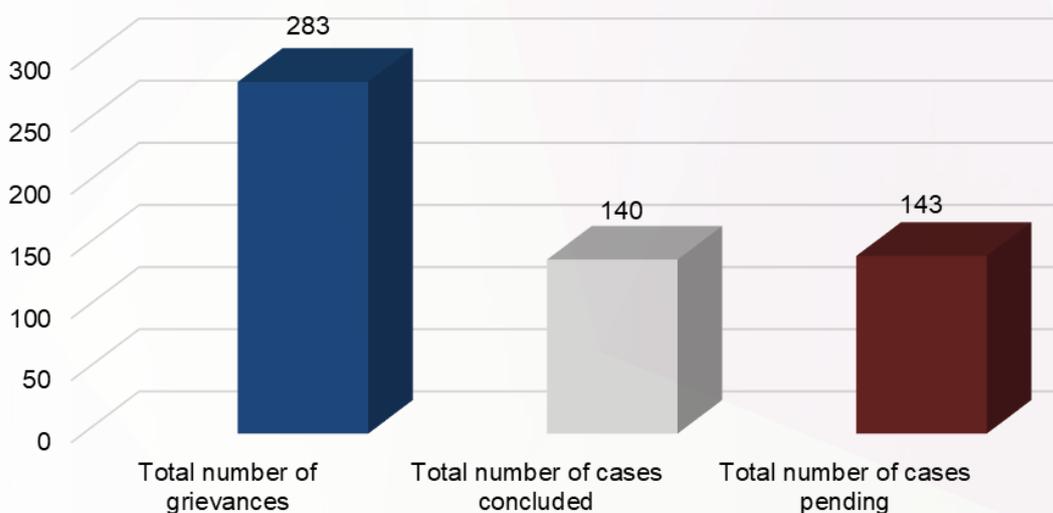


Figure 4: Status of properly referred grievances up to 30 June 2020

A depicted in **Figure 4** above 143 properly referred cases remained pending as at end September 2020. Delays in the finalization of cases can be attributed to the lack of information from the Departments and aggrieved employees due to lockdown, especially during May and June 2020.

However, the PSC has noted some improvement in the accessibility of information from departments and aggrieved employees since August 2020. It is anticipated that many cases will be concluded following the easing of the lockdown restrictions to alert level 1.

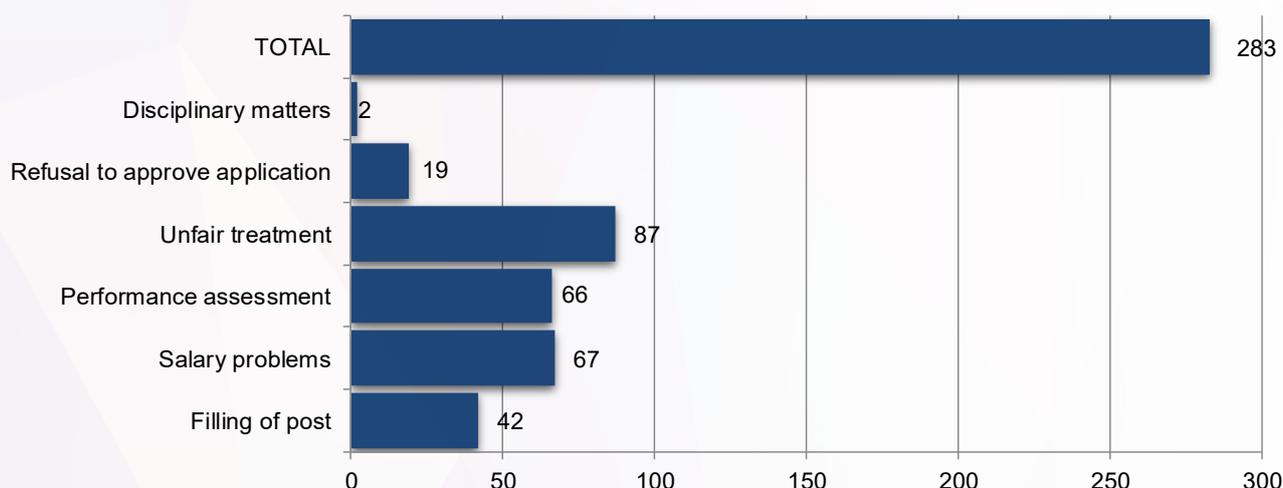


Figure 5: Types of properly referred grievances

The 283 grievances that have been lodged with the PSC is an indication that departments failed to resolve these grievances internally or they failed to conclude the grievances within the prescribed timeframes. Since the PSC has observed that there is continued referral of grievances outside the provisions of the Grievance Rules, 2003, it thus call upon Labour Relations Officers within departments to ensure that on an annual basis, employees are workshopped on these Rules. Unions are also called upon to play an active role in assisting their members in lodging grievances, and where the time-frame for lodging grievances has lapsed, to advise them accordingly.

7. OVERALL NUMBER OF COMPLAINTS HANDLED BY THE PSC UP TO 30 JUNE 2020

In September 2004, cabinet mandated the PSC to manage the NACH. NACH was an amalgamation of anti-corruption hotlines which were managed by different Departments. This decision was aimed at reducing the duplication of costs and as a “one stop” mechanism for reporting wrongdoing in the Public Service.

The NACH forms part of a comprehensive ethics framework by providing a proactive mechanism for prevention and detection control processes. It is a system designed to enable members of the public and public servants to report any form of corruption that they might be aware of or suspicious of in their respective areas by reporting to the 0800 701 701 hotline number. A case of alleged corruption can also be reported through text, email, online report, or webchat. Regardless of how a report is made, the PSC prohibits retaliation against anyone who, in good faith, reports a possible violation or who participates in an investigation, even if sufficient evidence is not found to substantiate the concern.

The NACH became one of the most useful instruments for reporting complaints during the Country’s COVID-19 nation lockdown. It provided tip-offs to the SASSA for complaints about food parcels, fraudulent use of SASSA cards and complaints related to R350 social distress relief grant payment and reporting tip-offs to SAPS regarding fraud relating to Personal Protective Equipment.

7.1 Cases of alleged corruption received by the NACH

Since the inception of the NACH in September 2004, a total of 23 198 cases of alleged corruption were reported by callers and whistle-blowers as at 30 September 2020. In line with the existing protocols, all the cases were referred to national and provincial departments and public entities for investigation. The outlook on the overall number of cases received suggest that there is significant improvement in the reporting of cases of alleged corruption to the NACH and many arrests were made by the Hawks. This is largely because of government's efforts to eradicate corruption in all spheres of government. The arrests by the Hawks is boosting up public confidence and trust in reporting acts of corruption in the public service.

7.1.1 Complaints received in the first and second quarter of the 2020/21 financial year

In terms of the NACH statistics, a total of 381 cases of alleged corruption reported through the NACH were received in the first and second quarter of 2020/2021 and were simultaneously referred to the national and provincial departments as well as public entities for investigation. A total of 277 cases were received in the second quarter of 2020/2021 financial year.

7.1.2 Feedback received in the first and second quarter of the 2020/2021 financial year.

During the course of the 2020/2021 financial year, **17** feedback of alleged corruption relating to national departments were received by the NACH. Out of **17** cases, a total of **12** cases were closed on the Case Management System of the NACH as shown below. In addition, **227** cases relating to SASSA were closed on the CMS of the NACH during the 2020/2021 financial year. SASSA is only required by the PSC to provide feedback on the conclusion of these cases on a regular basis. According to SASSA, the complaints were received and handed to grants review for investigation.

- The Department of Home Affairs provided feedback on six cases relating to amongst others, alleged unethical behaviour, bribery, fraud and illegal immigration. These matters were referred to the Employee Relations for disciplinary actions against the officials.
- The South African Police Services provided feedback on seven cases relating to alleged unethical behaviour. Of the seven cases, five were unproven whilst two cases were referred for disciplinary actions.
- The Department of Correctional Services provided feedback on two cases for alleged smuggling of illegal substances and unethical behaviour. Of the two cases, one was unproven while the other has been referred to Code Enforcement to institute disciplinary actions against the implicated official.
- The Department of Justice and Constitutional Development provided feedback on two cases for alleged non-payment of housing allowance and fraud. Of the two cases, one was unproven while the other has been recommended for disciplinary actions against the official for contravening section 45 of the PFMA and also for recovery of the amount involved (R3 440.10).

The PSC observed that departments are taking an extended period of time in providing feedback to the PSC despite the fact that whistle-blowers are requesting feedback on progress made with investigations. The effectiveness of an investigation is influenced by the time it takes to conclude the investigation without unwarranted delays. If the delay is unreasonably long and cannot be explained, it is likely to cause prejudice to the complainant who reported the allegations in good faith.

Generally many investigations are prolonged due to variety of factors like complexity and retrieval of supporting information. The PSC has expressed concern regarding the delays observed in finalising corruption cases. As a result, the PSC has requested all departments to complete investigations within a reasonable time to avoid the notion of "nothing will change," which is associated with poor governance.

7.1.3 Trends analysis of cases received during the 2017/2018 to 2020/2021 financial years

Figure 6 below shows the trends analysis of cases of alleged corruption reported to the NACH on quarterly basis in the 2017/2018-2020/2021 financial years. The figure showed that in the first quarter of 2019/2020 financial year, there was a surge in the number of cases (340) compared to 2017/2018 financial year with 214 cases. This is because the PSC embarked on a series of awareness campaigns aimed at extending its footprint in the fight against corruption. There was a decline of cases in the second quarter of the 2020/2021 financial year by 277 cases. The decline was due to Covid-19 national lockdown that has affected the smooth operation of the call centre facility, particularly in the month of July and August 2020.

According to the database, there was an increase in the number of cases (460) in the second quarter of the 2019/2020 financial year compared to 2018/2019 financial year with 286 cases. Notably, in the third and fourth quarters of the 2019/2020 financial year, there was increase in the number of cases while in the third and fourth quarters of 2017/2018 financial year, there was a decline in the cases reported. This is because the NACH was operating 8 hours per day without full staff complement.

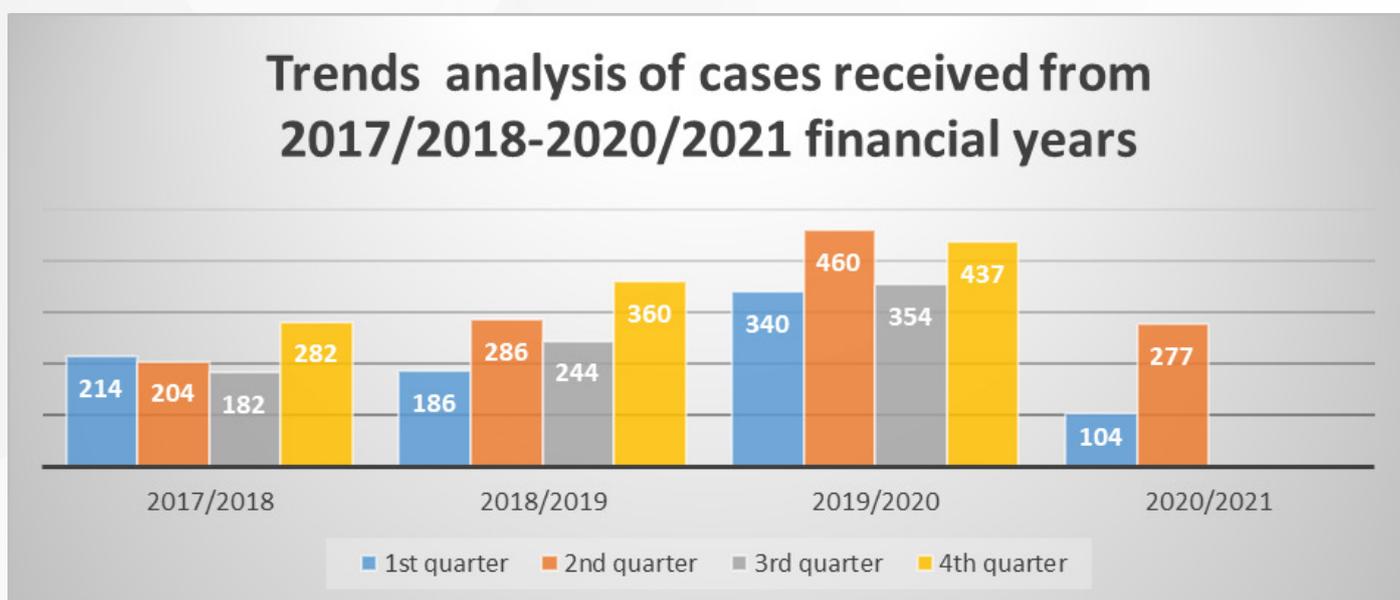


Figure 6: Trends analysis of cases received from 2017/2018 to 2020/2021 financial years

7.1.4 Types of complaints received in the 2020/2021 financial year

As reflected in **Figure 7** (next page), the majority of cases (66%) are referred to SASSA for investigation. The rest of the cases are referred to national and provincial departments for investigation. The PSC is concerned that departments are taking an extended period of time in providing feedback despite the fact that whistle-blowers are requesting feedback on progress made with investigations. Generally many investigations are prolonged due to variety of factors like complexity and retrieval of supporting information.

Types allegations reported during the first and second quarter of 2020/2021

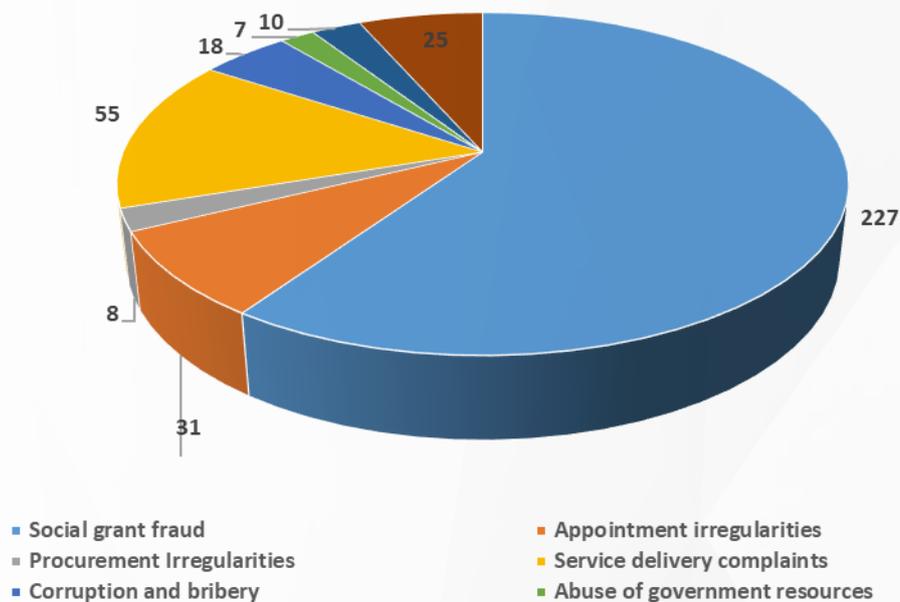


Figure 7: Types of complaints received in the 2020/2021 financial year

The efficiency with which the departments investigate allegations of corrupt activities reported to them contribute towards the effectiveness of the NACH.

7.1.5 Comparative analysis of calls received by the NACH in the 2017/2018, 2018/2019 and 2020/2021 financial years

Figure 8 (next page) shows the number of calls received since 2017/2018-2020/2021 financial years when the NACH is managed in-house. The analysis of the calls revealed that the NACH has registered a total of 66 986 incoming calls during the 2017/2018 financial year. Out of 66 986, eight hundred and eight two (882) case reports were generated and referred to the relevant law enforcement agencies for investigation.

In the subsequent financial year (i.e. 2018/2019), the NACH has registered a total of 51 581 incoming calls. Out of 51 581 incoming calls⁶, 1076 case reports were generated. In 2019/2020 financial year, the NACH has registered a total of 70 500 incoming calls, of which 1591 cases were generated. This number is slightly higher as compared to 2017/2018 and 2018/2019 financial years.

As at 30 September 2020, the NACH has received a total of 17 000 incoming calls of which 381 cases were generated in the first and second quarter of 2020/2021 financial year. The number is slightly lower due to COVID 19 Lockdown and that the NACH was operating in-house five (5) days per week and eight (8) hours per day. Despite this, most of the complaints received were tip-offs related to disaster management funds which were directed to the relevant law enforcement agencies.

⁶ Incoming calls are considered inbound calls in the call centre (they include answered calls, unanswered calls and drop calls. A dropped-call is the telephone call which, due to technical reasons, was cut off before the caller had finished the conversation and before the caller had hung up.

Calls received and cases generated by the NACH in 2017-2018 to 2020-2021 financial years

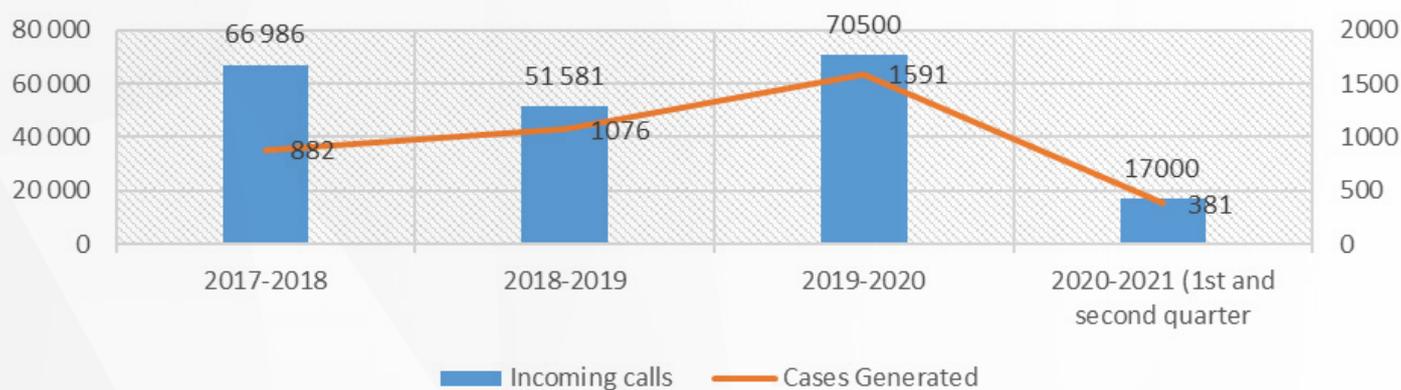


Figure 8: Comparative analysis of calls reported to the NACH in the 2017/2018 to 2020/2021 financial years

The arrangement for the operation of the NACH from 08h00 to 16h30 (8 hours per day) has created a severe challenge on the effectiveness of the NACH as the facility is limiting members of the public to report corruption after hours in the presence of the call centre agents. The PSC took the decision for the NACH to operate 8 hours due to lack of adequate funding. As the NACH is a designated single hotline through which corruption in the public service should be reported anonymously, it remains significant that it must be adequately resourced to enable people to report 24/7. A comprehensive strategy for the improvement of the NACH has been developed and will be submitted to the Minister for the Public Service and Administration as per his request disaster management funds which were directed to the relevant law enforcement agencies.

7.2 Other methods of addressing unethical conduct in the Public Service

Apart from the NACH system, there are various other methods of reporting complaints relating to personnel and public administration practices. These methods include completing Annexure A of the *PSC Rules on Conducting Investigations*, written complaints / statement which may be posted, e-mailed or faxed to the PSC, complaints lodged verbally in person (i.e. walk-ins), via a WhatsApp or social media platforms including the PSC’s website, and matters referred to the PSC by other institutions (e.g. the Public Protector or Auditor-General).

Furthermore, sections 196(4)(f) of the Constitution also mandates the PSC to conduct own accord investigations. Own accord investigations may emanate from an environmental analysis, media / social media reports, request by the PSC, matters of public interests and trends analyses falling within the mandate of the PSC.

7.2.1 Complaints received in the 2nd quarter of the 2020/21 financial year

All complaints received were within the jurisdiction of the PSC and were concurrently investigated as indicated in Table 5 below.

Table 4: Complaints received in the 2nd quarter 1 July to 30 September 2020

National/Provincial	Number Received	Closed	In Progress
National	46	10	36
Provinces	133	81	52
Grand Total	179	91	88

For the period 1 July to 30 September 2020, the PSC dealt with a total of **179** complaints. Of these, **51** complaints were received from the NACH system and **128** were walk-ins reported at the PSC provincial level.

Despite challenges encountered due to the Covid-19 pandemic, as at 30 September 2020, **91 (51%)** of the **179** complaints were finalised and **88 (49%)** are in progress.

7.2.2 Trends Analysis of cases handled by the PSC

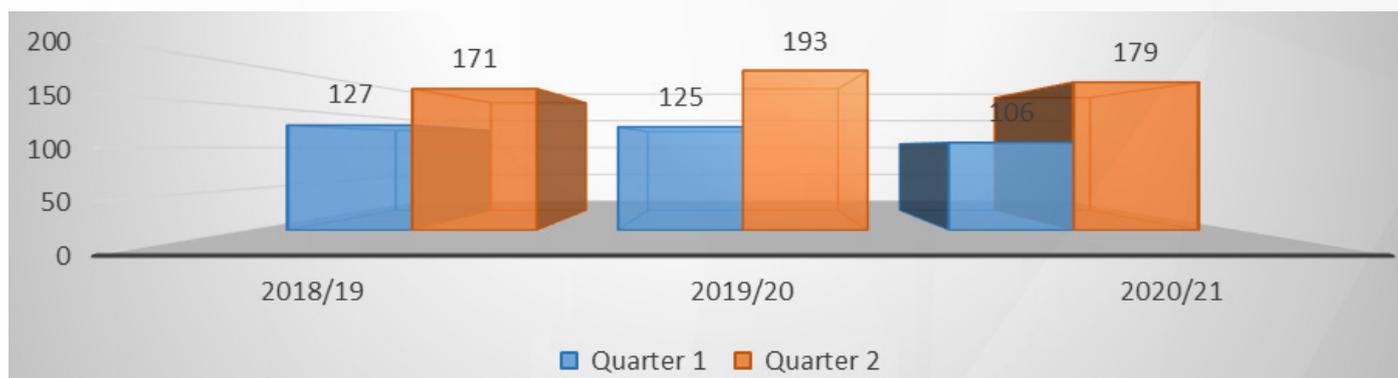


Figure 9: Cases handled: Quarter on Quarter for the period 2018/19 to 2020/21 financial year

The number of complaints received in the second quarter of the 2020/2021 financial year has increased (**179**) when compared with the 106 of the first quarter of the current financial year. However, complaints received in the second quarter are slightly lower than complaints received during the same period in the year 2019/2020. The increase in reporting in the second quarter can be ascribed to the easing of the lockdown due to COVID-19 pandemic.

Of the **179** complaints reported during the second quarter of the 2020/21 financial year, **102** relate to alleged irregularities in personnel practices such as appointments, transfers and other career management in departments. The remaining **77** relate to alleged irregularities relating to Public Administration Practices such as financial management, personnel provisioning and administration, supply chain management processes and non-service delivery.

7.2.3 Outcome of complaints handled by the PSC

Emanating from the finalized investigations, a complaint can either be substantiated or unsubstantiated. In instances where allegations were found to be substantiated the PSC issued recommendations, advice or directives to EAs to take action on the areas identified. These recommendations mainly relate to the institution of disciplinary action, or that EA's should approach the court to correct irregular appointments.

In the event where information is reported timeously, the PSC can intervene and act swiftly to stop irregularities even before the processes are completed. For example, in the Gauteng Provincial Office, the PSC submitted reports to Departments of Health advising the EA of the inherent irregularities that were happening in the filling of certain positions. As a result, the processes was stopped before the said appointments can be confirmed. However, the officials identified for the irregularities in the processes are being disciplined. The intervention was essential in promoting good governance in public administration.

The PSC also noted that due to the nature of certain recommendations and the number of the people implicated, where disciplinary action is recommended, it may take longer for departments to conclude the implementations thereof. For instance, in the Department of Public Works and Infrastructure (DPWI), the PSC concluded its investigation in the previous financial year, regarding to 684 appointments, disciplinary proceedings are still underway. The Minister of DPWI initiated the process of approaching the court to remedy the irregularities identified.

The PSC noted that most of its investigations has yielded positive results on improving good governance and accountability in the public service