



**MANUAL:
UNLAWFUL INSTRUCTIONS
AND
HANDLING OF ETHICAL DILEMMAS IN THE
WORKPLACE**



REPUBLIC OF SOUTH AFRICA

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FOREWORD

The Public Service Commission (PSC) is mandated in terms of the Constitution of the Republic of South Africa, 1996, amongst others, to promote and maintain a high standard of professional ethics throughout the Public Service. In 1997, the Code of Conduct for the Public Service was promulgated and subsequently promoted through workshops with officials at both national and provincial levels. Based on a high number of complaints from the head of departments and public servants relating to systemic corruption and disregard of prescripts in departments, the PSC deemed it necessary to introduce a *Manual on Unlawful Instructions and Handling of Ethical Dilemmas in the Workplace* in order to address resurgent unavoidable challenges and generate a practical understanding of its implications and application.

This manual is an important pillar in the establishment of good governance and ethical conduct of public servants. The manual will assist the Executive Authorities in the execution of their duties, particularly, when they are not certain on issuing instructions and where there might be an issue of a conflict of interest. In the execution of their duties, the Executive Authorities and public servants need to have respect for human rights, the rule of law, accountability and transparency in government, and to show ethical and servant leadership in their duties and obligations.

The PSC appeals to all public servants, from the most juniors to the senior managers, to demonstrate a practical understanding of procedures, directions and lawful instructions contained in the Code of Conduct as well as other legislations and regulations. This is pivotal for effective service delivery. It is crucial that officials as servant leaders must as a constitutional and legislative directive reject, resist and refuse any unlawful instructions as well as offers and gifts as these may be construed as willful acts and bribes.

The PSC anticipates that this manual will assist in the promotion of a national integrity system, professionalism and meritocracy in the workplace so that the paradigm in the public service shifts from a rules bound culture to one that aspires to the constitutional values and principles.

In light of this manual, all Executive Authorities, Heads of Department and public servants must ensure that their practice and conduct conform to the democratic values and principles governing public administration. Lastly, public servants must perform their duties and functions efficiently, effectively and with integrity, in accordance with the law, lawful instructions and administrative policies.

Chairperson: Public Service Commission

CONSTITUTIONAL VALUES AND PRINCIPLES

Chapter 10, section 195 of the Constitution of the Republic of South Africa, 1996, requires that the Public administration be governed by the democratic values and principles:

- *“maintaining and promoting a high standard of professional ethics;*
- *promoting efficient, economic and effective use of resources;*
- *orientated towards development;*
- *delivering services impartially, fairly, equitably and without bias;*
- *responding to people’s needs and encouraging public participation in policy matters;*
- *accountable for its actions;*
- *transparent by providing the public with timely, accessible and accurate information;*
- *cultivating good human resource management and career development practices to maximise human potential; and*
- *broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past.”*

BILL OF RIGHTS

The Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country as set out in chapter 2 of the Constitution and affirms the democratic values of human dignity, equality and freedom. The state must respect, protect, promote and fulfil the rights in the Bill of Rights. The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

Section 8(1) of the Constitution proclaims that:

- “(1) The Bill of Rights applies to all laws, and binds the legislature, the executive, the judiciary and all organs of state.*
- (2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.*
- (3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court:*
- (a) to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and*
 - (b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).*
- (4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.”*

CHAPTER 1: UNLAWFUL INSTRUCTIONS AND HANDLING OF ETHICAL DILEMMAS IN THE WORKPLACE

1.1 INTRODUCTION

- 1.1.1. The purpose of this guide is to elaborate on the contents of the Code of Conduct to align it with the Public Service Regulations of 2016. To empower public servants to take ethical decision in respect of **unlawful instructions** that have become systemic in the public service. The PSC has observed that unlawful instructions in the public service has brought up a crippling effect on service delivery, the progressive realisation of human rights in the country and economic growth. This manual is aimed at making the Code more understandable to guide all public servants on ethical practices.
- 1.1.2. The manual does not introduce any new principles and follows the same structure and numbering of the principles as in the Code, to allow for easy comparison. When using this manual, departments are encouraged to add examples of their own, related to their particular environment.
- 1.1.3. It should be emphasised that the introduction of this manual is developmental in nature and that it may require revision/amendments from time to time.

1.2 TRAINING

- 1.2.1. In order to promote a high standard of professional ethics in the workplace, public servants must think and behave ethically. This manual should therefore serve as an aid in developing and presenting short training courses for all employees. It also contains many examples, which illustrate ethical complexities in the work environment, which may serve as a basis for training and case studies.
- 1.2.2. The manual should be read in conjunction with the Code of Conduct to assist in maintaining public confidence in the integrity and impartiality of the Public Service by providing minimum expectations about acceptable behaviour and benchmarks for ethical practices.

1.3 RESPONSIBILITY OF THE EXECUTIVE AUTHORITIES, HEADS OF DEPARTMENT AND EMPLOYEES

- 1.3.1. It is an accepted fact that human beings learn by observation and experience. A special responsibility is therefore placed on the employer, namely the Executing Authorities (EAs) (i.e. Ministers and MEC's) at the political level, and Public Service managers at all levels, to create an appropriate environment in which values are established and exemplary models are set for all employees. In this regard, EAs are precluded by law from issuing unlawful instructions and are reminded that ignorance of the law is an inadequate defense if an unlawful instruction is issued. Where the EAs are uncertain of particular prescripts, the senior managers should provide guidance were necessary or consult the PSC as the custodian of public administration.
- 1.3.2. Section 195(1) (a) of the Constitution requires that "a high standard of professional ethics must be promoted and maintained" in public administration. In terms of the collective agreement (Public Service Co-ordinating Bargaining Council Resolution 2 of 1999) all the employees in the Public Service have the responsibility to comply with the prescribed Code of Conduct. This forms the main basis on which pro-active, corrective and even disciplinary action rests and the employer must do everything possible to ensure that the contents of the Code of Conduct is known to all employees.

- 1.3.3. Section 16A of the Public Service Act, 1994, requires that EAs must take disciplinary action against HoDs who do not comply with any provision of the Public Service prescripts and to report the particulars of non-compliance to the Minister of Public Service and Administration. Section 16A also requires HoDs to take disciplinary action against employees who do not comply with a provision of the Public Service Act and to report the particulars of non-compliance to the relevant Accounting Officer.
- 1.3.4. Regulations 11, 13 and 14 of the Public Service Regulations, 2016 provide that employees must abide by and be familiar with all legislation and lawful instructions applicable to their conduct and official duties and further report fraud, corruption, nepotism, maladministration, criminal offences and non-compliance with the Public Service Act to the relevant authorities.
- 1.3.5. Section 64 of the Public Finance Management Act, 1999 provides that any directive with financial implications by an EA of a department to an accounting officer must be in writing. If such directive is likely to result in non-compliance with prescripts, the accounting officer will be responsible for such non-compliance unless the EA has been informed of the likelihood of that unauthorised expenditure. If the EA proceeds with the implementation of such directive, the written reasons must be filed immediately with the National Treasury and the Auditor-General as well as the relevant provincial treasury, if a provincial department is involved, by the HoD.
- 1.3.6 It is important to reiterate that the primary purpose of the Code is a positive one, namely to promote exemplary conduct and lawful instructions and ethical conduct. Notwithstanding an employee shall be guilty of misconduct in terms of the Code of Conduct, and may be dealt with in accordance with sections 16A, 16B and 17 of the Public Service Act, 1994, if he or she contravenes any provision of the Public Service Act as defined.

CHAPTER 2: GUIDELINES ON THE PROVISIONS OF THE CODE

2.1 ADHERENCE TO THE CONSTITUTION AND OTHER LAWS

The purpose of this section is to inform Executive Authorities and Heads of Department, as well as all public servants, regarding their responsibility to perform their duties within the confines of the legislative framework and report irregularities as well as unlawful instructions to the relevant authorities.

2.1.1. An employee shall be faithful to the Republic and honour and abide by the Constitution and all other laws in the execution of his or her official duties.

- **What does failure to follow lawful instruction entail?** Failure to follow a lawful instruction means a superior issued an instruction and that the employee receiving such instruction failed to obey it without any justifiable reason(s).
- **What is a lawful and reasonable direction/ instruction? What is a lawful and reasonable direction/ instruction?** An instruction will be lawful and reasonable to the extent that it falls within scope of the contract of service of the particular employee (reasonable) and it complies with the laws of the country (lawful). The general view is that employees are only obliged to follow directions that are both lawful and reasonable. For example, it would be considered an unreasonable instruction if such instruction completely falls outside of the scope of the contract of service for which the employee is not capable or qualified to perform.
- **What is required for a direction to be lawful?** The lawfulness of direction does not depend upon the existence of a discernible, positive rule of law supporting the direction. A direction will be lawful to the extent that it falls within the scope of the contract of service and involves no illegality.
- **Can employer policies constitute lawful and reasonable directions by the employer?** A fair, lawful and reasonable direction is carried out without breaking any statute, common law or departmental policy, procedures, delegations and contract of service. Failure to comply with the above departmental policies may be regarded as a breach of implied duty of obedience.
- **What are the consequences for an employee who fails to obey an unlawful direction/instruction?** Refusal by an employee to implement an unlawful or unreasonable direction/ instruction is an insufficient ground for an employer to take disciplinary action against an employee.
- **What are the consequences for an employee who fails to obey lawful direction/instruction?** Breach of the implied duty of obedience can result in disciplinary action against an employee on the charge of insubordination or gross insubordination.

Firstly, the Constitution deals with specific aspects related to the rights and interests of all citizens. This stipulation of the Code in the first instance requires the loyalty of public servants to the existing democratic order. Secondly, the supremacy of the Constitution must be accepted and honoured by all. Lastly, every public servant must have a reasonable understanding of the contents and purpose of the Constitution an aspirant, living and transformational document in which the fundamental values in enshrines ought to become a daily part of life.

There are several Acts and Regulations applicable in the Public Service which place a positive duty on an employee to abide by the legislative framework and report irregularities to a higher authority. For example, reporting of irregularities to a senior manager, to act as a whistle-blower and/or report irregularities to the South African Police Service and/or oversight bodies such as the PSC and the Public Protector.

Example 1: *The Courts have on several occasions pronounced the repercussions of non-compliance with prescripts. In the case of the Life Esidimeni Arbitration Award, the learned judge held that: “The constitution goes further to impose overarching duties on wielders of public power. As elected office bearers and so too those in the public service go about their duties, they must first and foremost be faithful to the law. They must act within the ambit of the law and eschew unlawfulness. They may not elevate their persona; or arbitrary or political or other preferences above or in a breach of binding law. That is the bare minimum of the constitutional tenets of the rule of law”.*

Example 2: *In the case of MEC for Health, Eastern Cape and Another 2014 v Kirland Investment (PTY) LTD t/a, 2014. The Superintendent-General received an application for the establishment of a private hospital by Kirkland Investment. Upon assessment and with the recommendations of the Advisory Committee, the Superintendent-General rejected the application. At that time, the Superintendent-General was hospitalised before conveying the decision to the Company. Consequently, an acting Superintendent-General was appointed to act to the position of Superintendent-General and he (Acting Superintendent-General) was instructed by the MEC to overturn the decision made by the Superintendent-General. The Superintendent-General on his return revoked the decision by the Acting Superintendent-General as unlawful. The revocation of decisions was made without recourse to the Court and considered in terms of a proper process. The court held that: “there is a higher duty on the state to respect the law, to fulfil procedural requirements and tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline. It is the Constitution’s primary agent. It must do right, and it must do it properly”.*

It has been observed that in many instances where irregularities occurred in the public administration, the employees involved allege that they acted on unlawful instructions from EAs or senior managers. On the other hand, the EAs sometimes hide behind the notion that they did not know the law and acted on the advice of the officials. In the Life Esidimeni Arbitration Award, referred to above, the insinuation by the EA concerned that she was not correctly advised by the Administration, and the claims by the Administration that they acted on instructions from the EA were rejected and accordingly they were held accountable for their actions.

Where there is doubt about the lawfulness of instruction or proposed action, legal advice should be sought from internal legal services or external sources such as the Office of the State Attorney or the Office of the Chief State Law Advisor. This may assist to reduce tension between the political-administrative interface.

Example 3: *Public servants at different levels are involved in administrative tasks which may include developing policies and procedures. Any such proposals must be carefully checked to ensure that they comply with the spirit purport and objects of the*

Constitution or other legislation. The principles established by means of administrative law and further embodied in legislation such as the Promotion of Administrative Justice Act, 3 of 2000 must be complied with when developing policies and procedures. This may entail public participation and consultation to ensure that a fair process is followed and that such action will pass scrutiny by the courts.

Example 4: *Section 33(2) of the Constitution provides that everyone whose rights have been adversely affected by administrative actions has the right to be given written reasons. This means that, to abide by the Constitution, every public servant should ensure that administrative decisions and actions comply with the procedural requirements and are substantively sound. This implies that decisions should be rational, reasonable and transparent. Failure to comply with these principles may lead to such decisions being held to be administratively unfair. Employees must carry out all reasonable instructions, to ensure that services are rendered to the community in an effective, economic and efficient manner. Large organisations such as Public Service departments can only function effectively if there are proper lines of authority (clear delegations), which are known and respected by subordinates.*

Example 5: *An employee receives an instruction from an administrative or a political superior to do something that is not allowed by the prescripts that govern the Public Service. The employee must know what the rules are and in such a case must point out the illegality of the proposed instruction to his or her superior. If the latter persists, the employee must request the instruction in writing, note his or her objection and report the matter to an appropriate authority. Any instruction with financial implications, must, in terms of section 64 of the Public Finance Management Act, be communicated in writing. If such instruction is likely to result in unauthorised expenditure the accounting officer will be held accountable for such expenditure unless the likelihood of such unauthorised expenditure was brought to the attention of the EA. When the EA, persists, the matter must immediately be reported to the AG and the relevant treasury.*

Example 6: *If an employee is instructed by a superior to place an order for the purchase of equipment where the proper tender procedures have not been followed, the employee may ask that the matter be referred to the accounting officer for a decision.*

2.1.2 An employee shall put the public interest first in the execution of his or her duties.

This stipulation means that where decisions have to be made or discretion has to be exercised, due consideration should be given to putting the interests of the public first. The public servant's own interests or any other sectarian interest must always be placed subordinate to the public interest.

Example 1: *An artisan working at a hospital is bound by his or her service contract to work from 8:00 to 16:30. No standing arrangement exists regarding payment for overtime. A thunderstorm has knocked out the main power supply to the hospital and the operating theatres are functioning on generator power. The generator is also giving problems and the artisan is instructed to do emergency maintenance on the generator at 16:00. It would be expected of the artisan to conclude the maintenance work even if it means having to work later than his or her contractual working hours.*

Example 2: *The majority of staff working at a regional office indicate their desire to take their annual leave during December. If the leave was granted, this would mean that the office would not be able to render proper services to the community. A compromise will have to be reached between management and the relevant employees, entailing that some of the officials will remain on duty to ensure continued service delivery.*

2.1.3 An employee shall loyally executes the policies of the Government of the day in the performance of his or her official duties.

The Bill of Rights in the Constitution, inter alia, protects each citizen's political rights, which includes the right to associate with and belong to the political party of his or her choice.

The election process will result in the political party drawing the majority vote taking office. This might mean that a specific public servant's personal preferences might not be reflected in the outcome of an election. It could also mean that the priorities, programme of action and policies adopted by the Government of the day may differ from the personal priorities of individual public servants. Public Service employees are nevertheless required to serve the elected Government of the day in a dedicated, skillful and faithful manner in executing such policies.

Example 1: *A public servant personally believes that primary health care should be the highest policy priority in the country and also supports a political party that shares this view. The Government of the day, however, adopts as its policy priorities the provision of housing and the combating of crime. The employee will be expected to accept the Government's prioritisation. This does not, however, mean suppressing ideas or creativity.*

Example 2: *If the Government of the day is considering implementing a particular scheme and it is an employee's responsibility to advise how this scheme can best be implemented, the employee, despite possibly disagreeing with the scheme, is required to set aside his or her personal feelings and to objectively decide, by looking only at the various available options and the advantages and disadvantages of each option, on the best approach for the communities involved.*

2.1.4 An employee shall abide by and strive to be familiar with all legislation and other lawful instructions applicable to his or her conduct and official duties.

To faithfully and efficiently serve the Government of the day, as well as the public, employees are required to know their job content (generally in the form of job descriptions and annual performance agreements including in some cases work plans), the policies in accordance with which their jobs have to be done and the procedures to be followed.

Supervisors are responsible for ensuring that employees are familiar with their job content. Employees are equally responsible for making an effort to become knowledgeable workers, able to perform efficiently and following with the prescribed policies and procedures applicable in their work environment; in the best interests of the public and the communities they serve.

Example 1: *Not being familiar with the Public Service financial prescripts, an official approves the purchasing of equipment without obtaining the required approval aligned with the National Treasury regulations. Such an action would mean unauthorised expenditure and could give rise to costly and mismanagement.*

Example 2: *As a result of his or her own lack of knowledge, an employee misinforms someone applying for an old age pension about the qualifying requirements, the process to follow in applying, or the amount for which he or she will qualify. This could have serious consequences for that member of the community.*

2.1.5 An employee shall cooperate with public institutions established under the Constitution and legislation in promoting the interest of the public.

A number of institutions have been created under the Constitution (Public Protector, Auditor-General, Public Service Commission, Commission for Gender Equality, etc.) and other institutions have been created by legislation (tender boards, commissions of enquiry, etc.). These institutions serve as checks and balances to ensure sound administration. Public servants should therefore not regard these institutions negatively, but should assist them to perform their roles by, for example, providing any information and explanations they might require.

Example 1: *If the Office of the Public Protector is requested to investigate a complaint by a member of the public against any Government department, it would expect the co-operation of employees in that department in providing whatever information is required.*

Example 2: *If the Auditor-General finds irregularities in the financial administration of a department, the relevant departmental officials should not regard the findings negatively. They should understand and appreciate the Auditor-General's role and co-operate fully with the Auditor-General's Office to clear up the problems.*

2.2 RELATIONSHIP WITH THE PUBLIC

2.2.1. An employee shall promote the unity and well-being of the South African nation in performing his or her official duties.

The preamble to the Constitution states that the adoption of the Constitution is intended to:

- heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
- lay the foundations of a democratic and open society in which Government is based on the will of the people and every citizen is equally protected by law;
- improve the quality of life of all citizens and free the potential of each person; and
- build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

To maintain the high ideals set by the Constitution, purposeful and determined efforts are required from all citizens. Public servants are inevitably seen to be part of "Government", so this is even more important in their case.

Example 1: *A good team spirit, good interpersonal relationships and a generally pleasant, helpful and professional atmosphere amongst a group of employees from different population groups who are working directly with the public, will set an example for the community at large. A good example would be in an office where identity documents or passports are issued.*

Example 2: *An employee should try to enroll for a course to learn one of the other official languages used in the area. He or she should also encourage interpretation into other official languages at meetings where this is required.*

2.2.2. An employee shall serve the public in an unbiased and impartial manner in order to create confidence in the public service.

The Public Service serves the total community, and the public expects to be treated equally, efficiently, professionally and in a friendly manner. Employees are therefore required to live up to this expectation by treating those with whom they work and those they serve equally, in a manner that will not only create trust in the Public Service, but will also establish an appreciation for the quality and efficiency of services rendered.

Public servants shall be attentive, fair, responsive and impartial in the performance of their functions or duties and in particular, in their relations with the public. They shall at no time afford any preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power or delegation and authority vested in them.

Example 1: *An employee occupies a position in a department where applications from the public for certain services are considered. The employee's neighbour is aware of the fact that he or she can influence the process and approaches him or her with the request to assist in speeding up an application. The employee will have to consider this situation very carefully, as any action taken to assist the neighbour could be seen to favour the neighbour over other applicants and is unethical behaviour.*

Example 2: *An employee should request his or her clients/consumers to stand in a queue, so that each will be attended to when his or her turn comes, without favouring anyone or being perceived to be doing so.*

2.2.3. An employee shall be polite, helpful and reasonably accessible in his or her dealings with the public.

Employees need to realise that, by joining the Public Service, they have committed themselves to serve the community at large. The public expects to be served, and requires employees to be available and help them in a friendly and efficient manner.

Example 1: *An employee receives a telephone call from a member of the public but it is clear that the person's enquiry should be dealt with by another section or department. The employee simply tells the person that he or she must try elsewhere. This could have the result that the member of the public is referred to a number of different people without being assisted. This is not being helpful and it creates a negative image of the Public Service. The employee should offer to find out who the right person or department is and to phone the person back.*

Example 2: *When providing a counter service a specific employee has no one queuing at his or her counter while a colleague has people waiting to be served. The employee should help his or her colleague and the public by calling the people to his or her own counter, provided of course that he or she has a thorough knowledge of the work content of the relevant service.*

Example 3: *If a member of the public approaches an official for an appointment, for instance to obtain information on the qualifying requirements to be eligible for State housing, the*

official must try and accommodate the person in his or her schedule as soon as possible. This will not only demonstrate accessibility, but also a willingness to be of service.

2.2.4. An employee shall have regard for the circumstances and concerns of the public in performing his or her official duties and in the making of decisions affecting them.

Although the needs and/or concerns of members of the public might, in the eyes of employees, not seem to be as serious as the members of the public think, employees must calmly and efficiently provide help, information or even guidance to bring about solutions to their problems.

Concerns expressed by individuals or groups must be taken into account. Following a consultative and transparent process in these issues can contribute considerably to accommodating the circumstances and concerns of the public.

Example 1: *A primary health care clinic is being planned for a rural community but there is also the alternative of providing a mobile unit. The community should be consulted to determine their preference (public participation). This would ensure a sound decision and also involve the community at an early stage.*

Example 2: *A public servant is responsible for processing applications for housing subsidies for members of a disadvantaged community living in a squatter camp. If the applications are not dealt with quickly and efficiently, it could mean that a whole housing project is delayed and that people have to live under poor conditions for longer than would have been necessary if a speedier service had been provided.*

2.2.5 An employee shall be committed through timely service to the development and upliftment of all South Africans.

The Government of the day has clearly stated its intention to focus on the upliftment of communities, which had been disadvantaged in the past, as set out in its Reconstruction and Development Programme. This has to be carried out by all departments through their line functions. South Africa is a developing country and a large part of its population is, for various reasons, uninformed about their rights and obligations, the services they are entitled to, the procedures to follow and whom to approach in this regard. Since the Public Service is in the service of all its people, employees owe it to those members of the public who are uninformed, to provide them with all the information, guidance and help they might require. This should be done kindly and efficiently, even if it only means referring them in a friendly manner to another institution or another building.

Example 1: *Employees must take part in the development or upliftment programmes made available by their departments. They must be dedicated to their tasks and ensure that such programmes are executed most effectively and efficiently and within the time-frames which have been set.*

Example 2: *When dealing with members of the public in a health care situation, employees should use the opportunity to provide a total advisory service if they suspect that their knowledge of preventative primary health care is inadequate. Where employees cannot provide all the necessary assistance themselves, they should at least refer the individual to the right colleagues to be properly counselled or guided.*

2.2.6 An employee shall not abuse his or her position in the public service to promote or prejudice the interest of any political party or interest group;

Since the Public Service serves the entire community, which consists of various interest groups, political parties and people with different beliefs, etc., it follows that Public Service employees must not be involved in any matters, which could be seen as favouring one group over another.

As far as the Public Service is concerned, all its clients must be served equally in accordance with the policies of the government of the day. An employee must therefore clearly understand the difference between his or her responsibilities towards the Government of the day and becoming directly involved in party political issues.

***Example 1:** An employee belongs to a certain cultural society which has to compete for State grants on an annual basis. The employee occupies a senior post in the department which has to evaluate, process and submit motivated proposals to the relevant Minister. Such an employee may neither use his or her position to favour the application of the society of which he or she is a member in any way, nor may he or she prejudice applications from other societies. Such an employee should declare his/her interests to his/her supervisor to prevent a possible or perceived conflict of interest.*

***Example 2:** Employees are expected to actively support their respective Ministers/MEC's in preparing documents, etc. which will be used for official purposes, such as debates on draft legislation. Employees may, however, not become involved in preparing and drawing up documents to be used by a Minister or MEC for party political purposes.*

2.2.7 An employee shall respect and protect the dignity of every person and his or her rights as contained in the Constitution.

Employees must behave respectfully manner towards all their colleagues and the public, irrespective of who they are, how they look, what their status is, etc. Employees' behaviour towards others should always be friendly, helpful and efficient.

***Example 1:** If employees providing a counter service are approached by a member of the public who is highly intoxicated and noisy, they should treat the person in the same way as they would treat others, by calmly and correctly assisting him or her. It is important to remember that the public will be observing the situation carefully and that employees can improve the image of the Public Service by handling it professionally. If the situation does get out of hand and employees find it difficult to manage, they should not react emotionally, but should simply take the person to their supervisor, who can deal with him or her in private.*

***Example 2:** People are driven by the financial need to apply for welfare benefits. Officials responsible for assisting them with the necessary application forms must be sensitive to their circumstances and serve them with the necessary empathy.*

2.2.8 An employee shall recognise the public's right of access to information, excluding information that is specifically protected by law.

The Constitution provides for two dimensions in respect of access to information. The first is the promotion of transparency, which will allow every citizen reasonable access to all information that is in the public interest. This will allow them to participate actively in establishing the kind of

policies that they would like to see implemented. Secondly, the provisions also intend to enable citizens to protect certain of their basic rights as provided for in the Bill of Rights. They can request written reasons for any administrative action that might adversely affect them. Furthermore, they may also request any information for the exercise of protecting their rights.

As every public servant is aware, the determination of which information is of public interest is a complex issue. Certain information is regarded as protected information to be managed by departments in terms of the Guidelines on Minimum Information Security Standards as issued by the State Security Agency. The Open Democracy Bill also intends to establish a suitable framework within which the matter will have to be managed by departments. This is further complicated by the fact that the Labour Relations Act of 1995 also provides for specific mechanisms to afford public servants access to information held by the State as an employer to protect certain labour rights of employees.

The crux of the matter can be summarised as follows:

- Employees must at all times recognise the right of the public to have access to information.
- Every department must establish an appropriate policy which is in line with relevant national legislation to regulate this matter within their respective organisations.
- Employees must be aware of statutes and policies regulating this matter within their departments.
- The reasons for and process followed which resulted in an administrative action must be properly recorded so that the information will be available if requested.
- If the information requested by a member of the public cannot be made available, acceptable reasons for such a decision must be provided to that member of the public.

Example 1: *Providing the public with timely information is of crucial importance. Should a member of the public who has requested information on the availability of bursaries only be provided with such information after the closing date for registration for a specific academic year, the purpose of providing such information will have been defeated.*

Example 2: *Accessibility of information also implies that information must be maintained and updated regularly. Should a member of Parliament request certain information for a pending debate in Parliament, the inability of a department to provide accurate and up to date information on time could harm the democratic process.*

Example 3: *Making available information, which is not accurate, can also be very problematic. Members of the public may, for example, enquire about the implementation of a new scheme for which some of the details have not yet been approved by the applicable authority. An employee who does not know this, but is aware of the preliminary details of the scheme might provide the public with unofficial information. The Public Service could be embarrassed if changes are made to the scheme and it is eventually implemented differently to what the public expected.*

2.3 ETHICAL CONDUCT

2.3.1. An employee shall (a) not receive, solicit or accept any gratification, as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), from any employee or any person in return for performing or not performing his or her official duties.

Public servants to the extent required by their positions, shall in accordance with the laws or administrative prescripts, declare businesses, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest between their duties and private interests of public servants. They shall comply with measures established by the prescripts to reduce or eliminate such conflict of interest.

Example 1: *An employee at the Department of Trade and Industry went to the Traffic Testing Station to apply for a drivers license, after he failed for several attempts. Seeing that he is not making it, he promised the Traffic Instructor to pay him R1000.00 as a bribe to pass a drivers license. Unfortunately, during the police and/or traffic roadblock they found him in possession of invalid drivers license and immediately locked him up. During the court hearing, he mentioned that he obtained the drivers license from the Traffic Inspector at the unnamed Traffic Testing Station. The matter was reported to his employer at the Department of Transport, who subsequently took disciplinary action against the employee.*

In summary, public servants shall not solicit or receive directly or indirectly any gift, gratification or other favour that may influence the exercise of their functions, and the performance of their duties or their judgment.

2.3.2. An employee shall not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties.

To bring about and maintain trust in the Public Service, all employees are expected to serve in a loyal and dedicated manner. This requires employees not to get involved, either on or off duty, in matters or activities that could:

- a) be regarded as being fraud or theft,
- b) interfere with the carrying out of their duties,
- c) influence the way in which they do their work,
- d) influence their objectivity in making decisions,
- e) create embarrassment for the State as the employer, or
- f) be perceived to potentially prejudice or favour certain parties.

Employees' behaviour on and off duty should be such that the Government of the day and members of the public will trust them to loyally do their work, with the only objective being the best interests of the community.

Example 1: *An employee working with tax assessments may not, extramurally or during office hours and for extra remuneration, or as a favour, assist members of the public to evade tax.*

Example 2: *An employee may not serve on the board of an organisation/business with which his or her department does business.*

In summary, public officials shall at no time improperly use public moneys, property, services, or information that is required in the performance of, or as a result of their officials duties for activities not related to their official work.

2.3.3. An employee shall not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act.

Example 1: In 2016, the government reviewed the Public Service Regulations (the Regulations) to, among other things, prohibit public servants from doing business with the State - be it in a personal capacity or as a director in a company that conducts business with the State. Then in 2019, the President extended this provision to the whole of the public administration, when Section 8 of the Public Administration Management Act No. 11, 2014 (PAMA) was brought into effect by means of a proclamation. The PAMA was enacted on recommendations of the Public Service Commission (PSC). In view thereof, it is a criminal offence for public servants to conduct business with organs of the state or be a director of a company conducting business with any organ of the state. If found guilty, they can be liable to a fine or imprisonment for up to five years or both a fine and imprisonment.

In addition to the above prescripts, the government has in 2001 introduced the Financial Disclosure Framework so that all members of the Senior Management Service (SMS) declare all their financial interests. The Regulations extended the categories of employees who are now required to declare their financial interests who are middle managers, employees in the supply chain management unit and those working in finance units, ethics officers as well as employees of the Office of the Public Service Commission who verify financial interests disclosed by Senior Management Services members. Employees on level 9 (and those equivalent in terms of Occupational Specific Dispensation (OSD)) shall also be required to disclose their financial interest as part of the categories of designated employees. The PSC has found that 100% submission of the financial disclosure forms is not sufficient, as these public servants does not honestly declare all their financial interests. Some public servants who take advantage that the Regulations require them to declare what they had the previous financial year but not the current one, so they conduct business with the State and resigned as directors of the companies that have been awarded contracts or tenders. During the declaration period they would have nothing to declare. The PSC will recommend to the Minister of Public Service and Administration (MPSA) that the Regulations must be amended so that public servants declare the financial interests that they currently have.

A Framework and Strategy for implementing lifestyle audits in the public service was approved in 2020. Consequently, lifestyle audits have become compulsory for national and provincial departments from April 2021. The implementation of lifestyle audits is guided by the Public Service Regulation 22. This entails a risk-based approach to legitimise a fraud prevention and detection system. As a decentralised function and in terms of Regulation 22 of the PSR, 2016, HoD are thus accorded full responsibility for the implementation of the lifestyle audits as part of the National Anti-Corruption Strategy.

There are several instances where public servants have been reportedly found doing business with government. Of late, the Minister of Public Works reported on SABC news in January 2020

that 3700 employees in the department were found doing business with the State. This is a cause for concern as this department is involved in big projects and some of these employees might be in positions of power. The behaviour of these public servants undermines the government prescripts and laws that are in place. It also shows weak internal controls in government departments.

In order to strengthen the internal controls, the PSC has found that government systems do not talk to each other, therefore, recommends that they must be interfaced. These systems are: Central Supplier Database of National Treasury, Companies and Intellectual Property Commission, Personal Salary System (Persal) of the National Treasury Basic, Accounting System, Home Affairs and the South African Revenue Service.

The PSC has noted actions by the Ministers for 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 as an oversight institution, which promote amongst other things, a high standard of professional ethics in the public service will monitor the outcomes of reported investigations and prosecutions of the offenders.

2.3.4. An employee shall recuse herself or himself from any official action or decision making process which may result in improper personal gain, and this shall immediately be properly declared by the employee.

In terms of King IV of Corporate Governance, a conflict of interest is defined as

<i>Conflict of interest</i>	<i>A conflict of interest, used in relation to members of the governing body and its committees, occurs when there is a direct or indirect conflict, in fact or in appearance, between the interests of such member and that of the organisation. It applies to financial, economic and other interests in any opportunity from which the organisation may benefit, as well as use of the property of the organisation, including information. It also applies to the member’s related parties holding such interests.</i>
<i>Independence</i>	<i>Independence generally means the exercise of objective, unfettered judgement. When used as the measure by which to judge the appearance of independence, or to categorise a non-executive member of the governing body or its committees as independent, it means the absence of an interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making.</i>

Where there is a reasonable apprehension of bias toward a tribunal or administrative forum whenever employees feel that they cannot remain objective in performing their work or making a decision, or when other people might have reason to believe that they are not able to remain objective because of some kind of external involvement, they must immediately withdraw from such activities to protect the fair, honest and trustworthy image of the Public Service.

Section 6(2)(a)(ii) of the Promotion of Administrative Justice Act provides that it is a ground for judicial review if in taking administrative action, an administrator “was biased or reasonably suspected of bias”.

In the reported judgment of the Constitutional Court in the matter of President of the Republic of South Africa v South African Rugby Football Union (2) 1999 (4) SA 147 (CC), the Court dealt with an application for the recusal of five of its judges. In the course of an action instituted in the Constitutional Court against Nelson Mandela, the then President of the Republic of South Africa.

The applicant alleged that he had a reasonable apprehension that every member of the court would be biased against him, and that he consequently might not get a fair trial.

The general allegation made against all the members was that their bias would arise because they had been appointed by President Mandela. Further specific allegations were made against individual members of the court based on personal and political links with Mr Mandela. The court laid down the proper approach to the application of recusal of members of a court. The court stated that:

“It follows from the foregoing that the correct approach to this application for the recusal of members of this court is objective and the onus of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case that is a mind open to persuasion by evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact they have a duty to sit in any case which they are not obliged to recuse themselves. At the same time it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial.”

Example 1: *If an employee serves on a selection panel responsible for the filling of a vacant post and he or she discovers that one of his or her family members has applied for the post and has been short-listed, such an employee should recuse himself or herself from the proceedings since he or she will not be regarded as being able to remain objective. The employee should also declare this in writing.*

Example 2: *If an employee is involved in the purchasing of land for a Government project and some of the land belongs to one of his or her relatives, the employee should point this out to his or her superiors and recuse himself or herself from dealing with that particular transaction.*

Example 3: *An employee chairing a disciplinary hearing had on previous occasions mentioned in the tearoom: “One day I will dismiss you because you are so lazy...”. There will be a reasonable apprehension of bias and that the presiding officer will, in all probability, not be able to bring an impartial mind to bear on the matter.*

2.3.5. An employee shall immediately report to the relevant authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes a contravention of any law (including, but not limited to, a criminal offence) or which is prejudicial to the interest of the public, which comes to his or her attention during his or her employment in the public service.

Corruption refers to widespread moral deterioration especially bribery or fraud. It often goes hand in hand with other criminal practices, for example influence peddling, drug trafficking, ghost workers, fraud and organised crime which may threaten a legitimate economy. Firstly, it is a factor of social disintegration and is extremely harmful to any community. It is always underpinned by a “get rich quick” social ethos. Secondly, it undermines the legitimacy of a political system by destroying trust and confidence, for when an administration loses its credibility a climate for instability and lawlessness is created. Thirdly, it frustrates the economic system. It does this by acting as a disincentive to investment, whether by foreign or local entrepreneurs. Corruption eats away at the very fabric of public trust and confidence in our democracy. We need to nip it in the bud.

All employees must to report any illegal actions, dishonest behaviour or corrupt practices to their Supervisors or a relevant authority as soon as they become aware of them. Corrupt practices are often fed by lack of work ethic, absence of public accountability and responsibility, as well as by nepotism.

***Example 1:** An employee who is responsible for transporting employees regularly with a Government minibus might be allowed, for practical reasons, to drive himself or herself home and park the minibus at his or her premises. His or her colleagues notice that the employee is utilising the minibus as a taxi to earn extra money. They must immediately report this to the employee’s supervisor. If appropriate steps are not taken, the matter can be reported to the Public Protector.*

***Example 2:** If an employee in the Department of Transport responsible for issuing traffic fines to road offenders is offered money by a driver as a bribe, he or she must report the person offering the bribe for possible prosecution. If an employee accepts any bribe, he or she is guilty of corruption.*

***Example 3:** An employee is not involved in corrupt practices, but is aware of colleagues who are. If the employee keeps quiet and does not report the malpractice, he or she is evading collective responsibility for the integrity of the Public Service. In such a case, he or she becomes an accessory to corruption.*

2.3.6. An employee shall refrain from favouring relatives and friends in work related activities and not abuse his or her authority or influence another employee, nor be influenced to abuse his or her authority.

The Public Service does not appoint, promote and reward personnel who, irrespective of their political opinion or affiliation, family ties or position in the community, have the abilities to render a service. The following practices are unacceptable:

- a) Favouritism - this means that certain singled out employees are appointed, promoted, transferred, or given generous treatment based on subjective considerations such as friendship, returning a favour, etc.

- b) Nepotism - this implies that an employee is appointed, promoted, transferred, or given some or other advantage purely based on the fact that he or she has family or other ties with the person in a position to authorise such actions or to manipulate/influence the system.

Example 1: *Two employees (A and B) join the staff of the Public Service. They are given the same rank, are good friends and share the same office. Employee B is promoted to become Mr A's supervisor. Consequently, he is in a position to assign "special" tasks to Mr A, so that he will be able to show more noteworthy incidents for his merit rating than his colleagues. When the time comes for Mr A's merit assessment, which is presented by Mr B with enthusiasm and favouritism, he receives a merit award, although he does not necessarily deserve it.*

Example 2: *An employee participates in the process of selecting a person for appointment to a post in the Public Service. The employee gives preference to a person because he or she is a friend, a member of the political party to which the employee belongs or a member of a particular ethnic group. This is nepotism, which is contrary to the intent of the Constitution and the interests of the State.*

Example 3: *There are many ways in which an employee in a senior position can abuse his or her position. For example, the employees controlling entry into the parking area have clear instructions that the parking space is only for senior officials and official visitors. However, the head of the office overrides these instructions and allows his or her spouse to park in the facility from time to time. Such an action causes employees to lose respect for rules and for senior officials and is detrimental to the efficient functioning of the organisation.*

2.3.7 An employee shall not use or disclose any official information for personal gain or the gain of others.

Employees who in their official duties come into contact with sensitive, confidential or even secret information from time to time, may not disclose this information without the necessary authority to do so. Information may not be made available or utilised for personal gain or the gain of others or to support a personal vendetta against others. Employees must consider whether the disclosure of the information would be in the interest of the Public Service.

Employees must understand that transparency does not mean indiscriminately providing or disclosing information. Since it is impossible to provide full guidelines as to what information can be made available to whom, employees are urged to always seek prior approval from higher authority when they are uncertain.

Example 1: *The disclosure of the selection criteria or the interviewing questions to some of the contenders for a post would not only wrongfully favour the position of some candidates, but also negatively affect the rights of the other contenders to have an equal opportunity to contend for the post.*

Example 2: *If an employee, because of the nature of his or her job, knows a Government project that will increase property values in a particular area, the employee may not in any way make use of such information to enrich himself or herself or his or her relatives or friends.*

2.3.8. An employee shall not receive or accept any gift from any person in the course and scope of his or her employment, other than from a family member, to the cumulative value of R350 per year, unless prior approval is obtained from the relevant Executive Authority.

When a person is employed as a public servant, such an appointment carries a very special meaning. It implies that such an employee sells his or her labour to the State and will be remunerated from taxes collected from the community at large and that the employee shall then provide the community with the best possible service in a professional and dedicated manner.

It must be clearly understood by both public servants and the community at large that unless it is officially required that a member of the public should pay an additional amount for a specific service, e.g. in the case of a certain amount which has to be paid for the issuing of an identity document, no further payments be it in cash or kind, should be made. This principle should be included in all service charters and should be displayed in public buildings for the benefit of the public. Where additional payments are required for a specific service, this should also be indicated on the relevant (application) documents.

Likewise, potential service providers in the private sector should be made aware of the fact that the Public Service, in procuring services/goods, are bound by the principles contained in the Constitution regulating public administration which require the highest possible level of professional conduct. Offers of gifts, sponsorships, promotional material, luncheon invitations, etc. should thus not form part of their promotional activities with the Public Service as it inevitably creates the impression/perception of improper influencing of decision takers and also makes for an unfair competition where small service providers cannot afford to undertake such activities.

As this is always a highly contentious matter, the following is intended to serve as guidelines in directing departments' actions in this regard. It is impossible to provide departments with comprehensive guidelines and departments should approach the Public Service Commission for advice should they be in doubt regarding the handling of certain situations which may arise.

The acceptance of any gifts or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the performance of employee's duties can only be accepted within the express written approval of the HoD.

It is important to note that gifts and hospitality from a source other than a family member need to be declared. The gifts/benefits to be declared must be in excess of R350. Employees may also consult the Public Service Commission where doubts exist with regard to the acceptance of gifts.

2.3.9. An employee shall if he or she has permission in terms of section 30 of the Act to perform outside remunerative work, not perform such work during official work hours; and use official equipment or state resources for such work.

Employees are expected to place their undivided attention, time and skills at the disposal of the Public Service as the employer. The nature and demands of the job in the Public Service are such that the interests of both the Public Service and the community may be prejudiced by a public servant undertaking remunerative work outside official duties. It is therefore mandatory to obtain prior approval to perform remunerative work outside official hours.

Example 1: *An employee becomes a business partner. There is an arrangement that he or she should be on duty at the business after hours only. Unexpectedly, his or her work*

situation at the Public Service institution demands that he or she works overtime. The consequences of this may lead to a conflict of interest, frustration and divided attention.

Example 2: *A medical doctor employed in a Government hospital, shall not, without the approval of his or her HoD, do part-time work for which he or she receives remuneration at a friend's surgery and/or use Government equipment and/or medicines for this purpose.*

Example 3: *An employee works at a second job after hours, which means that he or she goes to bed late. The result is that the employee is tired during the day and cannot perform at the level he or she is expected to or capable of. This is not in the public interest and indirectly wastes taxpayer's money.*

2.3.10. An employee shall deal fairly, professionally and equitably with all other employees or members of the public, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language.

The Constitution, employment and labour legislation, as well as Common Law, provide employees in the Public Service with a fundamental right to be treated fairly and equitably. If that right is affected in any way, employees may utilise the dispute resolution mechanisms provided for in the Public Service Act, 1994, Public Service Regulations, 2016 and the Labour Relations Act, 1995, or may approach either the Constitutional Court, the Supreme Court or the Public Protector for relief, depending on the circumstances. It is therefore important that Supervisors/Managers in the Public Service should know what fair and equitable treatment means.

- (a) To deal fairly with other employees implies that an employee should:
- (i) always respect the established rights (in terms of Common Law, the Constitution, Labour Law and any other law that may apply) of other employees;
 - (ii) always grant other employees the opportunity to state their side of a case;
 - (iii) always allow other employees representation if requested; and
 - (v) always be willing to discuss/consult/ negotiate openly.

Example 1: *When an employee is, for instance, charged with misconduct, he or she should be treated procedurally, as well as substantively fairly. Procedural fairness implies that a specific disciplinary procedure should be followed whereby an employee should:*

- *be informed timeously about any charge against him or her;*
- *be granted the opportunity to state his or her case in a hearing;*
- *have the right to be represented;*
- *have access to all relevant information;*
- *have the right to cross question witnesses; and*
- *have the right to appeal.*

Substantive fairness implies that all the facts on the table should be taken into consideration as objectively as possible before a decision is made.

- (b) To deal professionally with other employees implies that an employee should:
- i. have sufficient knowledge about the subject;
 - ii. respond quickly to instructions/requests;

- iii. apply his or her mind fully to the relevant issues;
- iv. participate actively in a teamwork situation in order to deliver services/solve problems;
- v. respect the rights of other employees; and also
- vi. consider the interests of others involved.

(c) To deal equitably with other employees implies that an employee should:

- (i) not unfairly discriminate directly or indirectly against other employees on any grounds;
- (ii) treat other employees as equals at all times; and
- (iii) be totally objective and apply the same criteria in taking decisions that affect others.

Example 2: *A supervisor gives time-off to members of his or her own religious group but refuses to grant time off to members of other religious groups. This is discriminatory. All religious groups should be treated in the same way.*

2.3.11. An employee shall refrain from party political activities in the workplace.

In terms of the Constitution, the Public Service has to be apolitical in the service it renders to the community. This means that Public Service employees are required to render services to all the citizens of the country and may not be selective. The Public Service and its employees stand in the service of the country as a whole and may not, in their functioning, advance the interests of any particular political party.

Example 1: *Employees as candidates for elections:*

- 1) *An employee who is issued with a certificate in terms of section 31(3) of the Electoral Act, 1998 (Act No. 73 of 1998), stating that he or she is a candidate in an election, shall, not later than the next working day, inform his or her HoD in writing thereof and submit a copy of the certificate.*
- 2) *The employee shall be deemed to be on annual leave from the date following the date the certificate is so issued until, if he or she is:*
 - (a) *elected and the accepts election, the date immediately before the date he or she assumes office;*
 - (b) *elected, but declines election, the date that he or she declines election; or*
 - (c) *not elected, the date of the designation of representatives in terms of item 16 to Schedule 1A to the Electoral Act, 1998.*
- 3) *If the employee has insufficient annual leave, he or she shall be deemed to be on unpaid leave for the period in question.*

Example 2: *A person who wears a T-shirt with party political slogans while rendering direct services to the public in issuing identity documents may be accused of politically motivated discriminatory practices if he or she is unable to provide an identity document within a specific time, even if the reason for the delay is beyond his or her control. Furthermore, a member of the public might be offended by being served by someone promoting a specific political party in a public institution.*

Example 3: *An employee who allows members of certain political parties access to information to which the public is entitled, but denies members of another political party access to the same information, has failed to render services to all the people of South Africa, irrespective of political affiliation.*

Example 4: *An employee of government where involved in political unrest, looting and/or destruction of properties or arson during and/or after official hours. During police raid they were found in possession of stolen goods, as public servants their actions are regarded as unethical and unprofessional since political unrest, looting and/or destruction of properties/arson, inter alia, affect the integrity and reputation of the government. Public servants place an indispensable role in sustainable development and good government of a nation. With the advent of the modern state, there are seen as stewards of public resources and guardians of a special trust that citizens have placed in them. In return for this confidence, they are expected to put public trust above self-interest. Given these roles, a country expects its public service to demonstrate a high standards of professionalism and ethics.*

2.4 PERFORMANCE OF DUTIES

2.4.1. An employee shall strive to achieve the objectives of his or her institution cost-effectively and in the interest of the public

In their day-to-day functioning, employees should continually ask themselves whether what they are doing really contributes to delivering the services or results for which their organisational component is responsible. This, of course, requires all employees to have a thorough knowledge of the goals and objectives of their components and the institution and, importantly, also their specific duties within the component.

Supervisors/Managers at all levels should also continually ask themselves whether the functions their components are performing really contribute to delivering the services for which their institution is responsible.

Both employees and Supervisors/Managers should also guard against duplicating work that should actually be performed by another institution.

Example 1: *An employee plays computer games on an office computer during working hours. This undermines the spirit of dedication and steals time (and therefore money) from the employer. If a person does not have enough work to do he or she must tell his or her supervisor so that he or she can be used more effectively in achieving the organisation's goals.*

Example 2: *A budget programme manager or responsible manager must be careful to use the public funds entrusted to him or her to achieve the objective of the programme. This requires proper planning and the avoidance of ad hoc or spur of the moment decisions.*

2.4.2. An employee shall be creative in thought and in the execution of his or her official duties, seek innovative ways to solve problems and enhance effectiveness and efficiency within the context of the law.

Employees should be fully involved in performing their duties. They should apply their minds constantly and seek to do their work efficiently and effectively to deliver better results and or services. During the course of a normal workday, numerous problems occur in the work situation. Employees should continually seek to overcome these problems in the quickest and best possible manner and should also seek creatively and imaginatively to prevent the problems from occurring again.

Example 1: *If an employee working in a component that has to issue certificates becomes aware that the public is dissatisfied with the procedures followed and the time it takes to issue the certificates, he or she should consider legitimate ways in which the service could be rendered more quickly and efficiently, and implement such improvements as soon as is formally approved.*

Example 2: *If an employee who works in an office that serves the public notices that people are having difficulty finding parking or have to stand in queues for a long time, he or she should think of ways of solving the problem. The service point could be moved to a place that is more convenient and accessible for the public, or more than one service point could be created.*

2.4.3. An employee shall be punctual in the execution of his or her duties.

Employees should realise that their official responsibilities are very important and that the carrying out of their duties should receive their undivided attention, time and energy. Employees must report on time and refrain from leaving the workplace before the stipulated knock-off time. They should especially make an effort to see to it that their duties are finalised by the time/deadlines required.

Employees should furthermore strive to be self-motivated and self-directed, faithfully doing their work in accordance with the laid down policies and procedures without someone else having to request/remind them to do so.

Proper planning is essential to ensure that work is done by the stipulated due date and every employee must consider possible unforeseen circumstances to avoid crisis management

Example 1: *An employee turns up at work late and tired as a result of staying up late at a party the previous evening and is not able to do his or her work properly. He or she is guilty of being irresponsible and wasting public money.*

Example 2: *If an employee has to complete an urgent assignment by a deadline, he or she must work in such a way that he or she will not miss the deadline. This may require him or her to work during tea and lunch time and after hours, or having to request the assistance of colleagues if the task is too big for one person to deal with in the required time.*

2.4.4 An employee shall execute his or her duties in professionally and competently professional and competent.

Employees should continually ask themselves whether they are truly satisfied with their work and whether they would be satisfied if they were in the shoes of the people receiving their end-product or service. Employees should also constantly ask themselves whether they are treating others (colleagues, supervisors and the public) in a manner that respects their human dignity and legitimate rights and whether they are displaying a knowledgeable, pleasant, helpful and efficient attitude. Their ability to render services professionally and competently will also depend on their level of knowledge of the duties to be performed, which again emphasises the responsibility of both employer and employees to attend to the training.

Example 1: *Sometimes an employee rendering a counter service has to deal with a person who appears to have difficulty understanding why certain things have to be done in a certain way. The employee should not react emotionally, but must calmly explain the reasons. If the person is still unhappy, the employee could propose that the individual puts his or her complaint in writing and provide him or her with the address to which to send the complaint.*

Example 2: *If an employee is responsible for answering written enquiries from the public, he or she should make sure that all enquiries are responded to promptly and that the answers are factually correct and politely and correctly formulated. In cases where it is not possible to reply immediately, the employee should at least promptly acknowledge receipt of the enquiry.*

Example 3: *A newly recruited employee is placed on a counter service without direct supervision and before appropriate training has taken place. Although it could be argued that the relevant employee should learn the duties “on the job”, sight must not be lost of the harm that such a practice could cause the image of the employer if the employee acts incorrectly or customers experience unacceptable time delays.*

2.4.5 An employee shall co-operate fully with other employees to advance the interest of the public.

All employees realise that they work towards a common goal, namely to serve the Government of the day and the community/public as efficiently and as faithfully possible. Employees must therefore make a special effort to co-operate with one another. By helping and supporting one another and by sharing knowledge, ideas and even resources (where appropriate), employees will be enabled to function more efficiently and in the best interest of the Government and the community.

Example 1: *It is important to be aware of the overall mission or goal of the Public Service and to understand that each small part effectively played, contributes to bringing about the common good. An employee should therefore be receptive to ideas and suggestions by colleagues from other components. There is no room for jealousy or the “get off my territory” syndrome in the Public Service.*

Example 2: *If an employee realises that a particular public need can be effectively met only if his or her office co-operates with another office, the employee should go out of his or her way to enquire about such co-operation, even if the officials working in the other office are not co-operative at first.*

Example 3: *An official is approached by another department to serve on a selection panel. The employee must render assistance as requested if at all possible. He or she must, however, take into consideration the work demands in his or her own department and obtain approval from his or her supervisor.*

2.4.6 An employee shall be honest and accountable in dealing with public funds and use the State's property and other resources effectively, efficiently, and only for authorised official purposes.

The general public trusts public servants with the assets, property and funds of the State, expecting employees to handle these responsibly and honestly.

Employees are also expected to bring about savings for the taxpayer in the way that they handle public property and funds. Employees must realise that the lower the State's expenses can be kept, the more and better quality services can be rendered to the country within the limits of the available resources.

Example 1: *If an employee has access to a fax machine, he or she should not send and receive private faxes under the pretense that they are official. If the employee wishes to send a private fax, he or she must obtain approval to do so and must also pay for the use of the machine.*

Example 2: *An employee uses State property (cars, machines, furniture, etc), negligently or recklessly and causes damage. This means that public money is wasted and that a lower level of services can be rendered, which is not in the public interest.*

Example 3: *An employee uses State property (anything from paper and pencils to cars) for his or her private purposes. This is not in the interest of the public because the person is not only stealing from the State and the taxpayer, but also making the public lose respect for the Public Service.*

2.4.7. An employee shall use the appropriate mechanisms to deal with his or her grievances or to direct representations.

Although it is accepted that grievances and disputes may, from time to time, develop within the Public Service work environment, it is to the benefit of both the aggrieved and the employer (and the public) that such grievances and disputes be resolved between the parties concerned as soon as possible. It is for this very reason that specific grievance and dispute resolution procedures must be utilised by all employees. Whenever a grievance or dispute may develop it is, however, important to keep the following in mind:

- a) A grievance or dispute can only be resolved effectively if the parties to the grievance/dispute actively and personally engage in discussion/ conciliation.
- b) In the case of any grievance an employee must utilise the prescribed grievance procedure.
- (i) The grievance procedure for employees on salary levels 2 to 12 is contained in Rules for Dealing with the Grievances of Employees in the Public Service as promulgated in the Government Gazette No. 25209 dated 25 July 2003 and the Grievance procedure for members of the SMS is contained in the SMS Handbook Chapter 10. An employee who feels aggrieved by any official act or omission may lodge a formal grievance in accordance with the Grievance Rules.

Example 1: *When a supervisor transfers an employee to another post without consultation or agreement, the employee concerned may lodge a formal grievance. When a grievance is not resolved to the satisfaction of an employee, such employee may also refer a dispute to a relevant bargaining council established in terms of the Labour Relations Act, 1995.*

Example 2: *When an employee applied for a post and she was not appointed although she was the most suitable candidate and she finds out that the manager appointed another employee who did not meet the requirements for the post, such employee must first refer to a formal grievance to the Employer to raise her dissatisfaction. If the grievance is not resolved, the aggrieved employee may now refer her grievance to the PSC or she may refer unfair labour practise dispute to the relevant bargaining council.*

2.4.8. An employee shall be committed to the optimal development, motivation and utilisation of employees reporting to him or her and the promotion of sound labour and interpersonal relations.

To achieve the overall objective of the Public Service, which is to render excellent services to the public, all Supervisors/Managers in the Public Service are obliged to see that the personnel under their control have the knowledge and skills to perform their tasks at the required level, are motivated to render such services and are willing and able to promote sound relations. In striving to achieve this, a supervisor should keep the following in mind:

- (a) Development of personnel implies that an employee in a supervisory/managerial capacity should:
 - (i) understand what the development of personnel entails;
 - (ii) continually assess the developmental needs of personnel;
 - (iii) introduce a developmental plan;
 - (iv) see to it that the plan is followed; and
 - (iv) constantly monitor the progress of such a plan.

Example 1: *A supervisor must, in consultation with a newly appointed employee, identify his or her in-service training needs. The identified training needs should then be taken up in a training programme that is in line with his or her duty sheets and procedure manual. A training schedule should also be compiled to map the development progress of the newly appointed employee.*

- (b) Motivation of staff implies that an employee in a supervisory/managerial capacity should:
- (i) understand what the motivation of personnel entails;
 - (ii) assess the level of motivation of personnel;
 - (iii) introduce measures to enhance the level of motivation of personnel if necessary; and
 - (iv) constantly monitor the level of motivation of personnel.
- (c) Utilisation of staff implies that an employee in a supervisory/managerial capacity should:
- (i) understand what the utilisation of personnel entails;
 - (ii) assess the extent to which personnel are utilised;
 - (iii) introduce measures to provide for the optimal utilisation of personnel; and
 - (iv) constantly monitor the utilisation of personnel.

Example 2: *Supervisors/Managers should constantly monitor the workload and level of functioning of their personnel to ensure that all personnel are utilised optimally. This will avoid a situation where some employees have too much work while others have too little to do. Personnel should also be encouraged to acquaint themselves with tasks which are not normally part of their duties as well as more advanced duties, so that they can grow as workers to be ready for possible utilisation at higher levels when the time comes.*

- (d) The promotion of sound labour and interpersonal relations implies that an employee in a supervisory/managerial capacity should:
- (i) understand what sound labour and interpersonal relations entail;
 - (ii) assess the soundness of labour and interpersonal relations among personnel;
 - (iii) introduce measures, if necessary, to improve labour and interpersonal relations; and
 - (iv) constantly monitor the soundness of labour and interpersonal relations among personnel.

Example 3: *Supervisors/Managers should monitor the team spirit in their components and immediately intervene if their personnel seem to be negative or constantly arguing with one another.*

2.4.9. An employee shall avail himself or herself for training and development.

It is a particular responsibility of Managers and Supervisors to see that their subordinates receive ongoing training to ensure that they can perform their duties independently and to equip them for their future career advancement. However, each employee has a personal responsibility to take the necessary steps to ensure that he or she:

- (a) has full knowledge and understanding of what is expected of him or her as a Public Service employee;
- (b) has full knowledge and understanding of how to carry out his or her duties; and
- (c) enhances his or her knowledge and skills for purposes of possible future utilisation in higher positions.

Example 1: *If a new appointee is unsure of how to perform any of his or her duties, he or she should consult the prescripts regulating the relevant duties and should ask either his or her colleagues or supervisor, or both, for assistance.*

Example 2: *Employees who have served the Public Service for years may show under preparedness in certain areas of their work. It would be beneficial for them to use*

any opportunity for further training, for example, completing a module related to their work needs, or enrolling for further academic studies.

2.4.10. An employee shall promote sound, efficient, effective, transparent and accountable administration.

The promotion of sound, efficient, transparent and accountable administration implies that every citizen should have equal access to efficient, helpful and friendly service, irrespective of his or her status, gender, race, etc.

In rendering sound, efficient and accountable administrative services, the basic values and principles of the Constitution must always be kept in mind. Employees must at all times try to complete their tasks without delay, and should also continually strive to do quality work, no matter how unimportant a task may seem.

Example 1: *If an employee is instructed to make photocopies of documents that are to be attached to letters going out to various other institutions, such copies should be neat and clear, as this will add to the image of the institution.*

Example 2: *An employee who is responsible for managing Government owned transport must ensure that log books for all vehicles allocated to his or her division/section have been submitted in time and all kilometres travelled have been properly recorded.*

Example 3: *All official transactions must be properly recorded so that the procedure followed and considerations taken into account will be clear if an enquiry or dispute should arise. This will enhance transparency.*

2.4.11 An employee shall give honest and impartial advice, based on all available relevant information, in the execution of his or her official duties.

Whenever employees are asked to give advice to any higher authority on a particular matter, it should be given on the basis of professional integrity in terms of work ethic. This advice should not be influenced by personal likes, dislikes or preferences.

Example 1: *An employee who deals with a grievance of a colleague to whom he or she is sympathetic must not withhold facts from management to put the grievance of his or her colleague in a better light. The withholding of relevant information in this case might be detrimental to a department/administration.*

2.4.12. An employee shall honour the confidentiality of official matters, documents and discussions.

Transparency means, inter alia, that everyone has the right of access to information held by the State if such information is required to protect any rights or interests of the individual.

There is, however, information that is classified as confidential or is legally privileged. In such a case an employee to honour confidentiality, as disclosure may be detrimental to the State.

Example 1: *It would be wrong for an employee to supply the media with confidential information, such as Cabinet memoranda or a draft policy formulation of the Government of the day.*

Example 2: *Information that is kept on the personal records of employees is regarded as confidential and must at all times be treated as such. This information may, for instance, not be supplied to insurance companies or any outside party unless an acceptable reason exists for doing so and it has been appropriately authorised.*

Example 3: *Electronic Communication as per Minimum Information Security Standards. Sensitive and confidential information should only be faxed in the absence of more secure transmission possibilities. Such a fax must be authorised by the source and the*

recipient beforehand, information classified as highly confidential and top secret may never be sent through a public network, unless safeguard measures are taken. In all instances information must be safeguarded with a lock-in whatever way or form it might exist.

Access control

Various categories of information should be accessible to respective and intended users. An access control check list should be maintained. Rights to access should consider business continuity. Passwords shall not be shared with any other person for any other reason. Remote access should be controlled through relevant safeguards through robust identification, authentication and encryption techniques. Access to third parties is only allowed in incidences where there is little or no risk associated.

e-Mail and www

Must be used for business purposes and not for malicious and illegal purposes. Transmission of sensitive information should be accompanied by relevant encryption and advanced electronic signature. A virus-free environment needs to be maintained, suspicious mail should not be opened. Guard against copyright infringements, verify the information and acknowledge sources. Inappropriate material must be filtered.

Securing data

Confidential information should always be transmitted in encrypted form. Enforcement measures for security bridges should be priority set and communicated to all personnel. Privacy and confidentiality should be maintained at all times. The integrity with which third parties will treat data received has to be established prior to information dissemination. Information security should not be confined to passwords alone, other complementary applications e.g. bio-metrics should be explored. Only authorised personnel should speak to the media. Such conversations should be properly planned and comply with the broader framework. Addresses, and fax numbers are to be confirmed before dispatch.

Combating cybercrime

High security levels are to be maintained for networks. A risk assessment should be conducted periodically to inform how attacks can be minimised. Quick restoration capabilities must be ensured. Evidence should not be dismissed based on being in electronic format. Cybercrime is punishable by law as per the Electronic Communications and Transactions Act, the Interception and Monitoring Act and other sources of criminal law. Staff awareness and vigilance should be maintained.

2.4.13. An employee shall not release official information to the public unless he or she has the necessary approval.

Refer to chapter 4 section 4.1.7.

2.4.14. An employee shall when on official duty, dress and behave in a manner that is befitting of a public service employee.

The Government and the community expect a high level of professionalism from public servants. Professionalism here means punctuality, initiative, dedication, skill and quality in providing service. Dress should at all times be neat, decent and respectable. Employees, especially those who deal directly with the public, should take care not to dress too informally or to look untidy.

Example 1: *Employees, especially those who serve the public directly, should not, for instance, work in a torn shirt and jeans with holes in them.*

Example 2: *No public servant should come to work looking untidy. If, for example, an employee working at an international point of entry into the country comes to work unshaven and smelling of liquor, he or she will be creating a negative image of South Africa, which will be to the detriment of the country.*

2.4.15. An employee shall not consume alcoholic beverages or any other non-medicinal substance with an intoxicating effect while on duty or shall not report for duty under such influence.

Employees should never be under the influence of alcohol or any other intoxicants while on duty. Apart from the embarrassment it might cause, this could adversely influence their rendering of services and interaction with other employees and the public.

The morale of employees and a good team spirit are important in the functioning of an organisation. Employees must not disgrace themselves in the eyes of their colleagues by abusing intoxicating substances during official functions.

Even if an employee is off duty, he or she remains a public servant and should always act responsibly so as not to embarrass the Public Service.

Example 1: *A Supervisor who over-indulges during an office party and becomes intoxicated will disgrace himself or herself in the eyes of his or her seniors, colleagues and subordinates. This could have a negative effect on the efficient functioning of his or her component.*

Example 2: *If an employee, particularly one who has to serve the public, arrives at work smelling of liquor (or, worse still, under the influence) he or she is guilty of misconduct and bringing the name of the employer into disrepute.*

2.4.16. An employee shall not misrepresent himself or herself or use the name or position of any other employee or person to unduly or improperly influence any decision making process or obtain any undue benefit.

Refer to chapter 4 section 4.1.4.

2.4.17. An employee shall immediately report any noncompliance with the Act to the head of department.

Example 1: *Failure to comply with section 16A:*

(1) *of the Public Service Act provides that an executive authority shall: (a) take appropriate disciplinary steps against a HoD who does not comply with a provision of this Act or a regulation, determination or directive made thereunder; (b) immediately report to the Minister the particulars of such noncompliance; and (c) as soon as possible report to the Minister the particulars of the disciplinary steps taken.*

(2) *The head of a department shall: (a) immediately take appropriate disciplinary steps against an employee of the department who does not comply with a provision of this Act or a regulation, determination or directive made thereunder; (b) immediately report to the Director-General: Public Service and Administration the particulars of such non-compliance; and (c) as soon as possible report to that Director-General the particulars of the disciplinary steps taken.*

(3) *The Minister may report to the Cabinet or, through the relevant Premier, to the Executive Council of the relevant province any non-compliance by an executive authority with a provision of this Act or a regulation, determination or directive made thereunder.*

Example 2: *Section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 provides that any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed (section 25 (a) of Prevention and Combating Of Corrupt Activities Act, 2004: an offence under Part 1, 2,3 or 4, or section 20 or 21 (in so far as it relates to (6)) the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official / law enforcement agencies.*

Section 8(a1) of the Protected Disclosure Act of 2017 provides that any disclosure be made in good faith to:

- *the Public Protector;*
- *the South African Human Rights Commission;*
- *the Commission for Gender Equality;*
- *the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;*
- *the Public Service Commission;*
- *the Auditor-General; or*
- *a person or body prescribed for purposes of receiving complaints.*

CHAPTER 3: CODE OF CONDUCT FOR THE PUBLIC SERVICE

3.1. Adherence to Constitution and other laws. An employee shall:

- a) be faithful to the Republic and honour and abide by the Constitution and all other law in the execution of his or her official duties;
- b) put the public interest first in the execution of his or her official duties;
- c) loyally execute the lawful policies of the Government of the day in the performance of his or her official duties;
- d) abide by and strive to be familiar with all legislation and other lawful instructions applicable to his or her conduct and official duties; and
- e) cooperate with public institutions established under the Constitution and legislation in promoting the interest of the public.

3.2. Relationship with the public. An employee shall:

- a) promote the unity and wellbeing of the South African nation in performing his or her official duties;
- b) serve the public in an unbiased and impartial manner to create confidence in the public service;
- c) be polite, helpful and reasonably accessible in his or her dealings with the public;
- d) have regard for the circumstances and concerns of the public in performing his or her official duties and in the making of decisions affecting them;
- e) be committed through timely service to the development and upliftment of all South Africans;
- f) not abuse his or her position in the public service to promote or prejudice the interest of any political party or interest group;
- g) respect and protect the dignity of every person and his or her rights as contained in the Constitution; and
- h) recognise the public's right of access to information, excluding information that is specifically protected by law.

3.3. Ethical conduct. An employee shall:

- a) not receive, solicit or accept any gratification, as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), from any employee or any person in return for performing or not performing his or her official duties;
- b) not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;
- c) not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedules 2 and 3 of the Public Finance Management Act;
- d) recuse herself or himself from any official action or decision making process which may result in improper personal gain, and this shall immediately be properly declared by the employee;
- e) immediately report to the relevant authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes a contravention of any law (including, but not limited to, a criminal offence) or which is prejudicial to the interest of the public, which comes to his or her attention during his or her employment in the public service;
- f) refrain from favouring relatives and friends in work related activities and not abuse his or her authority or influence another employee, nor be influenced to abuse his or her authority;
- g) not use or disclose any official information for personal gain or the gain of others;

- h) not receive or accept any gift from any person in the course and scope of his or her employment, other than from a family member, to the cumulative value of R350 per year, unless prior approval is obtained from the relevant executive authority;
- i) if he or she has permission in terms of section 30 of the Act to perform outside remunerative work, not:
 - (i) perform such work during official work hours; and
 - (ii) use official equipment or state resources for such work.
- j) deal fairly, professionally and equitably with all other employees or members of the public, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and
- k) refrain from party political activities in the workplace.

3.4. Performance of official duties. An employee shall:

- a) strive to achieve the objectives of his or her institution cost-effectively and in the interest of the public;
- b) be creative in thought and in the execution of his or her official duties, seek innovative ways to solve problems and enhance effectiveness and efficiency within the context of the law;
- c) be punctual in the execution of his or her official duties;
- d) execute his or her official duties in a professional and competent manner;
- e) cooperate fully with other employees to advance the interest of the public;
- f) be honest and accountable in dealing with public funds and use the State's property and other resources effectively, efficiently, and only for authorised official purposes;
- g) use the appropriate mechanisms to deal with his or her grievances or to direct representations;
- h) be committed to the optimal development, motivation and utilisation of employees reporting to him or her and the promotion of sound labour and interpersonal relations;
- i) avail himself or herself for training and development;
- j) promote sound, efficient, effective, transparent and accountable administration;
- k) give honest and impartial advice, based on all available relevant information, in the execution of his or her official duties;
- l) honour the confidentiality of official matters, documents and discussions;
- m) not release official information to the public unless he or she has the necessary approval;
- n) when on official duty, dress and behave in a manner that is befitting of a public service employee;
- o) not consume alcoholic beverages or any other nonmedicinal substance with an intoxicating effect while on duty or shall not report for duty under such influence;
- p) not misrepresent himself or herself or use the name or position of any other employee or person to unduly or improperly influence any decision making process or obtain any undue benefit; and
- q) shall immediately report any noncompliance of the Act to the head of department.

