



FACT SHEET ON IRREGULAR APPOINTMENTS IN THE PUBLIC SERVICE

FEBRUARY 2016

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CHAPTER 1: INTRODUCTION

1.1 Background

Irregular appointments emanate from non-compliance with and transgression from the requirements of applicable legislative and policy frameworks in the appointment process. These requirements outline the recruitment and selection processes and procedures that should be followed when appointing employees. If done properly and in line with the applicable prescripts, recruitment and selection processes and procedures will assist in identifying persons most suitable for posts. To achieve this requires clear job descriptions and specifications that should inform advertisements and thus the identification of appropriately qualified, experienced, skilled and competent candidates. The job specifications should define the skills, knowledge, experience, personal attributes and other relevant factors necessary for the effective performance of the job in question, whilst the job description amongst other things should define the duties and responsibilities for each post. The rationale for detailed job profiling is to ensure that the criteria set for the selection of candidates is fair, transparent, consistent and structured throughout the recruitment, selection and appointment processes.

The human resource units in departments, in collaboration with line managers, have the responsibility to ensure that the criteria are clear, appropriate, justifiable and non-discriminatory in terms of all the applicable laws. These include, the Constitution of the Republic of South Africa, 1996, as the supreme law of the country, Employment Equity Act, 1998, (as amended), Labour Relations Act, 1995, (as amended), the Public Service Act, 1994, (as amended), and all the relevant subordinate legislation including the Public Service Regulations, 2001, (as amended), Collective Agreements, departmental Human Resource Management Policies and the Senior Management Service (SMS) Handbook (DPSA, 2003).

Whilst the HR units in departments are entrusted with compliance monitoring and advisory responsibilities in terms of applicable legislative and policy frameworks during the recruitment, selection and appointment process, the Accounting Officer (AO) of a

department, government component or trading entity is responsible for the effective, efficient, economical and transparent use of the resources of the institution, (PFMA 1999, section 38(b))¹. Furthermore, Accounting Officers (AOs) are required, in terms of section 38(c) of the PFMA, 1999, to take effective and appropriate steps to prevent any irregular or wasteful expenditure, amongst others. Notwithstanding the above, the AOs' duties include the responsibility to take effective and appropriate disciplinary steps against any official in the service who contravenes or fails to comply with the provisions of section 38(h(i) of the PFMA, 1999. In terms of the PFMA, an irregular appointment could be classified under irregular and wasteful expenditure; as there could be financial implications to correct an act that ought to have not taken place.

The findings of the Public Service Commission's report (PSC, 2015) on recruitment and selection alluded to alleged inconsistency in the application of recruitment and selection practices and in some instances non-compliance with applicable policies on recruitment and selection by some national and provincial departments². According to the report, the inconsistency and non-compliance with recruitment and selection policies has, in some instances, resulted in the appointment of officials who are incompetent and not fully qualified for the positions they occupy. There is also an increasing trend of public service officials lodging grievances and complaints with the PSC that relate to allegations of irregular recruitment and selection of employees in their departments. It is in this context that the PSC decided to undertake an analysis of complaints and grievance investigation reports to establish the extent of irregular appointments and the contributing factors.

1.2 Mandate of the Public Service Commission

In terms of section 196(4)(b) of the Constitution of the Republic of South Africa, 1996, read in conjunction with sections 9 and 10 of the Public Service Commission Act, 1997, the Commission is mandated to investigate, monitor and evaluate the organization and administration, and personnel practices of the Public Service.

¹National Treasury. 1999. Public Finance Management Act (PFMA) of 1999 as amended. Republic of South Africa.

²PSC. 2015. The impact of recruitment and selection practices on the functionality of selected national and provincial departments. Republic of South Africa.

In addition, section (196)(f)(iv) of the Constitution, 1996, mandates the PSC to, of its own accord or on receipt of a complaint, advise national and provincial organs of state regarding personnel practices in the Public Service, including those relating to recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the Public Service.

1.3 Objectives of the Study

The objectives of the study are to:

- Determine the extent of irregular appointments in the Public Service;
- Identify key factors in the recruitment and selection process that lead to irregular appointments;
- Reflect on the resource and performance implications of irregular appointments on departments; and
- Propose measures to curb continuation of practices that lead to irregular appointments.

1.4 Methodology

The following methodology was adopted:

A combination of qualitative and quantitative research method was adopted for this study. Information was gathered from secondary data sources such as the PSC's investigation reports, published articles and books. The cases that were lodged with the PSC, either through the grievance management process or the complaints process were reviewed to select only those cases that related to irregular appointments in the Public Service between the financial periods 2011 and 2015. A random sample of 30% of the identified cases was selected for an in-depth analysis and identification of the specific problems or challenges in the recruitment and selection process which were found to be irregular. In particular, emphasis was placed on substantiated irregular appointment cases, but not on alleged irregular appointment cases.

As part of the secondary data collection process, relevant legislative prescripts were reviewed and other data sources were utilised to contextualize and problematize the issue of irregular appointment. This included a review of recruitment and selection practices from other countries to understand challenges and explore learning experiences.

For data analysis and interpretation, graphs have been used to present the data and trends, followed by interpretation of graphs. The PSC investigation reports were further analyzed to identify key factors that contribute to irregular appointments.

1.5 Limitations to the study

The PSC has not collected primary data on irregular appointments from national and provincial departments, but relied on grievance and complaints cases that have been reported to and investigated by the PSC, and ultimately found to be irregular during the financial years 2011 to 2015. The main reason for this was that the PSC is of the view that there is sufficient data at its disposal that could be analysed and interpreted which would assist in depicting the extent of irregular appointments in the Public Service and the underlying factors.

Although primary data was not collected and the sample of substantiated cases used is fairly limited, it is possible that the irregular appointment cases reported to and investigated by the PSC are a tip of an iceberg, given that appointments can only be declared irregular after an investigation which should be triggered by a grievance or a complaint. From the analysis conducted and other previous PSC reports on HR practices, the factors that contribute to irregularities in appointment processes are almost the same in all cases. Therefore a conclusion could be drawn that the information that is derived from the infestation cases is sufficient to enable the PSC to generalize the qualitative findings and to formulate recommendations on the way forward.

1.6 Structure of the Report

The remainder of this Fact Sheet is structured as follows:

Chapter 2: Presents the legislative framework and literature review;

Chapter 3: Presents the findings and discussion thereof; and

Chapter 4: Presents the conclusion and recommendations.

CHAPTER 2: LEGISLATIVE FRAMEWORK AND LITERATURE REVIEW

2.1 Introduction

The purpose of this chapter is to summarily present the legislative and regulatory framework underpinning the recruitment and selection process, from which the issues of irregularity in appointment arise. A brief overview of the literature covering steps in recruitment and selection processes, factors that lead to irregular appointments, mechanisms to correct irregular appointments, the costs associated with and likely impact of irregular appointments on individual/organizational performance and staff morale was conducted. This chapter also looked at the correlation between wrongly recruited individuals and organisational performance challenges, costs, productivity and staff morale.

2.2 Legislative and Regulatory Framework

In South Africa Public Service the recruitment and selection process is governed by the following legislative, regulatory and policy frameworks, and several implementation guidelines, toolkits and bargaining council resolutions:

- Constitution, 1996, in particular section 195(1)(h)(i);
- Public Service Act, 1994, as amended;
- Labour Relations Act, 1995, as amended;
- White Paper on Human Resource Management in the Public Service (1997);
- Employment Equity Act, 1998, as amended;
- Public Service Regulations , 2001, as amended;
- Public Service Coordinating Bargaining Council (PSCBC) Resolutions: (Resolution No 3 of 1999, and Resolution 1 of 2007);
- Senior Management Service (SMS) Handbook, 2007 (as amended);
- Promotion of Administrative Justice Act (AJA), 2000, as amended; and
- A Toolkit on Recruitment and Selection (PSC: 2007);
- White Paper on Human Resource Management in the Public Service (2007)

The recruitment and selection process is informed by requirements for fair and non-discriminatory labour practices and those pertaining to legal administrative actions.

2.3 Literature Review

The recruitment and selection (R&S) process is a process which involves identification of a vacancy, recruitment, selection and appointment to fill that vacancy. To start the R&S process all approval protocols and legislation and prescripts must be followed. For the purposes of this factsheet, it is important to briefly scan the literature on what is said about irregular appointments and the implications thereof.

2.3.1 Irregular appointment - explanation

The concept of irregular has been borrowed from finance concepts wherein the term “irregular expenditure is utilised and means expenditure, other than unauthorized expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation including Public Finance Management Act (PFMA)”³. In Human Resource practices the term “irregular appointment” is utilised to describe a wrongful action that has taken place during the process of R&S which is in contravention with legislation, regulations and other subordinate prescripts. Simply put, irregular appointments entail transgression of the requirements of applicable legislative and policy frameworks in the appointment process. Such transgressions have the potential to render the outcome of an appointment process irregular if not detected early and corrected. The wrongful actions are committed by internal officials who represent the employer in the R&S process.

2.3.2 Action constituting irregular appointment

The R&S process has a couple of steps that need to be followed which are guided by legislation, regulations and other frameworks. For the Public Service, the Public Service Act (PSA), 1994, as amended, the Public Service Regulations (PSR), 2001, as

³ National Treasury. 1999. Public Finance Management Act (PFMA) of 1999 as amended. Republic of South Africa

amended, the departmental recruitment and selection policies and procedures, the Department of Public Service and Administration (DPSA) directives, PSCBC resolutions and Delegations of Authority framework must be complied with during the R&S process. Failure to comply with the recruitment and selection requirements stipulated in these frameworks would result in an irregular appointment.

2.3.3 Steps in the recruitment and selection process

<pre> graph TD A[Departmental objectives] --> B[HR Planning] B --> C[Job Analysis] C --> D[Job Description] C --> E[Job Specification] D --> F[Recruitment and Selection steps 1 to 6 below] E --> F </pre>		
Step 1	Job evaluation	<ul style="list-style-type: none"> Once on this step an assumption is made that approval of the filling of a vacancy has been received from the Executive Authority (EA) or his/her delegate and the vacancy is funded. All rules relating to Job Evaluation are being followed.
Step 2	Advertising	<ul style="list-style-type: none"> advert approved by EA or his/her delegate and placed on newspapers, government circular and etc.
Step 3	Registration of applications	<ul style="list-style-type: none"> Receive and record applications. Letters of acknowledgement written to all applicants (if applicable).
Step 4	Screening	<ul style="list-style-type: none"> Selecting applicants who meet minimum requirements as per advert.
Step 5	Shortlisting	<ul style="list-style-type: none"> Obtain EA or his/her delegates approval of Selection Committee members. Selection Committee to select a pool of most suitable candidates to be interviewed. Obtain EA or his/her delegates approval of selected pool of most suitable candidates and commence with final selection.
Step 6	Final selection	<ul style="list-style-type: none"> Selection Committee to select the most suitable/successful candidate from the pool. Submit the selection committee's recommendation to Appointing Authority (EA or DG or DDG levels etc. as per the delegations of authority) for appointing and approval. Once approval is received, inform the successful candidate. Issue letters of regret to the unsuccessful candidates.

With all the steps mentioned above, records of proceedings should be kept. Non-compliance with the legislative and regulatory framework underpinning the R&S process and not following the acceptable steps in the process constitutes irregularity in the appointment.

2.3.4 Action to correct irregular appointment

Once a wrongful action in the process has been detected, the process should be stopped provisionally and measures to correct the wrong action should be implemented. Section 5(7) (a) of the PSA requires any person upon whom a power is conferred or duty is imposed by the PSA to correct any action or omission that is purportedly made in terms of the PSA by that person, if that action or omission was based on an error of fact or law or fraud and it is in the public interest to correct the action or omission. If the wrongful action is not detected until such time the recruitment and selection process is finalised and appointment is made, then the department could institute an investigation into the process and take itself to a court of law to correct the decisions it made in relation to an appointment.

According to the *Khumalo and another v Member of the Executive Council for Education* case⁴ “the court’s decision stated that when a responsible functionary is enlightened of a potential irregularity, section 195 lays a compelling basis for the founding of a duty on the functionary to investigate and, if need be, to correct any unlawfulness through the appropriate avenues. This duty is founded, inter alia, in the emphasis on accountability and transparency in section 195(1)(f) and (g) and the requirement of a high standard of professional ethics in section 195(1)(a).” The court decision stated that section 5(7) (a) of the PSA undoubtedly includes the possibility of a functionary seeking recourse in the courts. Based on the above explanation, it is important for the department to be meticulous when dealing with the recruitment and selection process to avoid unnecessary investigations and litigation issues as they consume time and financial resources and delay service delivery.

⁴ *Khumalo and another v Member of the Executive Council for Education*: KZN-CCT 10/13 [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC) (18 DECEMBER 2013)

2.3.5 Recruiting wrongly: implications on costs and performance

A wrong recruit is a result of the recommendation made by the selection committee during the recruitment and selection process on who the most suitable candidate for a vacancy to be appointed by the appointing authority is. A wrong recruit might have a negative impact in the organisation, hence it is crucial for leadership to apply its mind when appointing. Bressler, (2014:2) argues that, successful companies not only need effective leadership, they also need effective team members.⁵ In his view, “bad hiring decisions could not only negatively affect a company financially, but could also harm employee morale and possibly lead to even more bad hiring decisions”. He further argues that, hiring has three possibilities, one being that, “the company could make a poor hiring decision and suffer the effects of that decision that include not only costs associated with that particular employee, but the domino effect of that person also making poor hiring decisions.”

Furthermore, Hinking and Tracey (cited in Bressler, 2014) state that the tangible cost that the company can incur due to poor hiring decisions relate to advertising, interview expenses with the possibility of travel, hotel, meals and other incidental costs, employment testing where applicable, relocation, salary, resources involved in preparation for the filling of a post, litigation and so forth. On the other hand, Bressler (2014) also suggests that the intangible costs though difficult to quantify can range from low staff morale, lower productivity levels to loss of sales, customers and dissatisfied customers because of inability to perform to acceptable standard.

In another study of nearly 2 700 employers that were surveyed, Williams & Scott (2012) argue that 41% of respondents indicated that a single bad hire can cost a company \$25 000, and a quarter of them estimated it to be around \$50 000 or more – notwithstanding the demoralizing effect on other employees and the new recruit himself/herself⁶. This argument is supported by Stantonchase’s article (2006), which also argues that, the industry rule of thumb is that, the wrong person costs you three times his or her annual

⁵ Bressler MS. 2014. *Building the winning organisation through high-impact hiring*. Journal of Management and Marketing Research Volume 15, April 2014. Southeastern Oklahoma State University

⁶ Williams DK & Scott MM. 2012. *Seven “non-negotiable” to prevent a bad hire*. [online] Available at <https://hbr.org/2012/05/7-non-negotiables-to-prevent-a/> [accessed on: 18 September 2015]

salary⁷. In the article it is argued that, a \$50,000 employee costs you \$150,000; a \$150,000 employee costs \$450,000. Additional to these costs is lost opportunity, business and potential customers and the momentum which still leaves you with the need to look for a replacement.

AIMM Consulting (2009:1) also share the above view in that, the cost of hiring a wrong person is a combination of the total cost in hiring a person (this includes recruitment fees, HR officials' time and administrative costs, outside testing costs, etc.), compensation, maintaining a person in a job (examples are, secretarial assistance, office equipment, training, etc.), total severance package (for instance, costs for negotiating separation, cost in law suit caused by the person), bad press, loss of corporate will and reputation⁸.

What is common knowledge in South Africa is, "golden handshake" as an example of negotiating separation. Furthermore, AIMM Consulting suggests that if employers choose to employ a "C player" instead of an "A player", the likelihood is that, C players will employ other C players and drive away A players and the trend will continue. In their view, C players drive away key customers, hire other C players, impair customer loyalty, erode employee morale and trust, fail to enter new "hot" markets, fail to implement necessary measures, waste money, and drive away high performing employees, (AIMM Consulting, 2009:2).

The same view is shared in the article by Stantonchase (2006) in which this is referred to as "talent downhill" in the sense that if you are a "10", there is a high tendency that you will hire a nine, and the nine will hire an eight - down goes the spiral and ultimately inferior people make the biggest percentage of the organisation's employ. In contrast, successful organisations will strive for growth, as such their employ will be full of 10s or above.

⁷ Stantonchase. 2006. *Hiring the wrong person costs you three times their annual salary*. Business Credit, September 2006

⁸ AIMM Consulting. 2009. *Take measure—a financial case for employment testing*. [online] Available at <http://www.aimmconsult.com/AFinancialCaseforAssessment.pdf> [accessed on: 18 September 2015]

2.3.6 Recruiting wrongly: implications on staff morale and organisation

Bressler (2014) suggest that, amongst the problems that can taint the selection process is that, certain influential people might already have their preferred candidate they wish to hire, either a friend, relative, or friend or relative of someone they have a specific relationship with. A specific example of the above is the finding in the South African Broadcasting Corporation (SABC) case whereby the Chairperson of the Board is alleged to have ordered that the qualification requirements for the appointment to the position of Chief Operating Officer (COO) be altered to remove academic qualifications as previously advertised in order to accommodate a particular employee who did not possess any qualifications for the post⁹.

From the human resource point of view, relaxation of requirements should be done within the law and must not seem to be favouring a particular candidate and lowering the inherent requirements of a job. Exclusion of any skilled and experienced potential candidate from employment opportunities may cause organisations to lose potentially qualified employees, making it more difficult to manage skills shortages and fill vacancies of hard-to-find skills.

Showing a special interest in a particular candidate is a form of favouritism or cronyism. Arasli & Tumer (cited in, In-Pang Fu, 2015: 3)¹⁰ define cronyism as giving preference to politicians, particularly to cronies, which means close friends, especially as evidenced in the appointment of hangers-on office. In his view, qualifications and merits have less impact on hiring, staffing and career development decisions; special privileges are given to friends, spouses and relatives by the person who practices favouritism or cronyism.

In-Pang Fu (2015:3) further highlights that similar to nepotism, cronyism has negative effects on human resource management practices especially in the recruitment and selection process due to these strong family or social ties between the candidates and the hiring authority. In most cases cronyism makes people to show commitment and be

loyal to individuals who influenced their appointment than to the organization itself. In addition, such people tend to get preferential treatment during performance appraisal through artificially-inflated ratings on their performance appraisals such that incompetence among these insiders is covered up in the organization (Khatri & Tsand, cited in In-Pang Fu, 2015: 5).

In one of the PSC's report (2008)¹¹, it was also reported that certain departments do not have any formal processes for identifying potential conflict of interest of panel members, an omission which could possibly lead to allegations of nepotism. The recent report on the impact of recruitment and selection practices on the functionality of selected national and provincial departments verified this assertion, (PSC, 2014). This practice, potentially excludes candidates from enjoying equal opportunities. For an example, Mashego (2015) mentioned one of the National Departments where two highly experienced staff members who possess relevant degrees required for the post were overlooked in favour of an in-experienced daughter of an Executive Authority.

The challenge with favouritism or cronyism is that it has the potential of causing organizational conflict, and according to Abun (2014:6), favouritism is a moral issue, for it violates basic moral standards of justice and fairness. When employees perceive favouritism to be widespread, this may also lead to organizational conflict between other and also between the executive or management and employees, (Abun, 2014:4). Once conflict starts, the working environment will not be conducive for other people to work and may result in some employees taking legal action against the employer.

This suggests that favouritism does not only negatively implicate human relations, but it can also affect the financial status of an institution due to things like legal battles. An example is the litigation process in the case of the COO of the SABC, which took extended periods of time through which state resources were unfortunately utilised. Whichever way one may want to call it, , favouritism, cronyism and nepotism all interfere with fairness because they gives undue advantage to someone who does not deserve or qualify for such opportunities (Nadler & Schulma, cited in Abun, (2014)).

2.4 Conclusion

Clearly, the information provided in this chapter confirms the assertion that when processes are not followed properly, this will lead to irregularities and the appointment of unsuitable persons. The latter will affect not only the performance of the appointed person, but also of the team he or she is working with and the organisation broadly. HR practitioners should therefore ensure that recruitment and selection practices are properly implemented, in line with the applicable legislative and regular prescripts,

CHAPTER 3: PRESENTATION AND DISCUSSION OF FINDINGS

3.1 Introduction

The purpose of this chapter is to present and briefly discuss the findings emanating from irregular appointment cases from national and provincial departments which were investigated by the PSC between 2011 and December 2015. As illustrated in **Table 1** below, public service employees and members of the general public lodge ‘alleged irregular appointment cases’ with the PSC mainly through the complaints rules and the national anti-corruption hotline. Most of the cases are investigated, however, in instances where inadequate information is provided, the cases do not get investigated.

Table 1: Overview of irregular appointment cases reported to the PSC

	FINANCIAL YEAR																													
	2010/2011					2011/2012					2012/2013					2013/2014					2014/2015					TOTAL				
	No of complaints -					No of complaints -					No of complaints -					No of complaints -					No of complaints -									
	lodged	NOT investigated	investigated			TOTAL	lodged	NOT investigated	investigated			TOTAL	lodged	NOT investigated	investigated			TOTAL	lodged	NOT investigated	investigated			TOTAL	lodged	NOT investigated	investigated			TOTAL
substantiated			unsubstantiated		substantiated				unsubstantiated		substantiated				unsubstantiated		substantiated				unsubstantiated		substantiated				unsubstantiated			
Complaints Rules	11	5	3	3	6	16	4	8	4	12	20	14	3	3	6	19	12	3	4	7	63	15	38	10	48	129	50	55	23	79
NACH	43	23	2	18	20	21	10	9	2	11	13	3	5	5	10	6	1	1	4	5	32	14	13	5	18	115	51	30	34	64
TOTAL	54	28	5	21	26	37	14	17	6	23	33	17	8	8	16	25	13	4	8	12	95	29	51	15	66	244	101	85	58	143

It is important to note that some of the cases lodged and investigated are found to be unsubstantiated, hence the statistics presented in the tables below relate to cases which were investigated found to be irregular. The statistics also include recruitment and selection grievance cases which were found to be irregular by the PSC.

3.2 Presentation of findings

3.2.1 Extent of irregular appointment cases

National Departments

As illustrated in **Figure 1** below, between 2011 and December 2015, the PSC investigated 48 cases emanating from national departments.

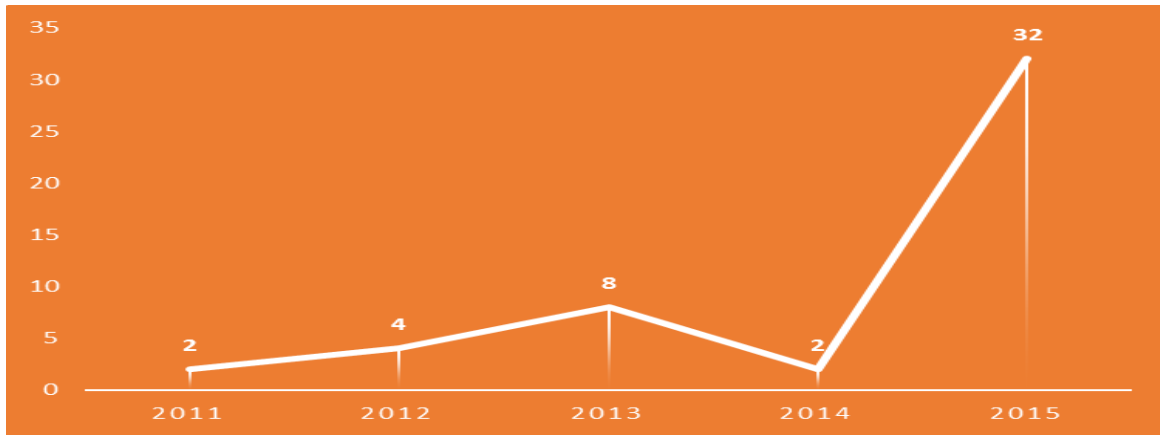


Figure 1: Total number of irregular appointment cases for national department - 2011 to 2015

Figure 1 above indicates that only 2 cases of irregular appointments were recorded in 2011, with an increase to 4 in 2012. The number increased to 8 in 2013 and later in 2014 there was a decline to 2. The number increased to 32 cases in 2015. It is important to note that some cases relate to one post whereas others relate to multiple posts. Therefore, the number of post implicated exceed the number of investigation cases.

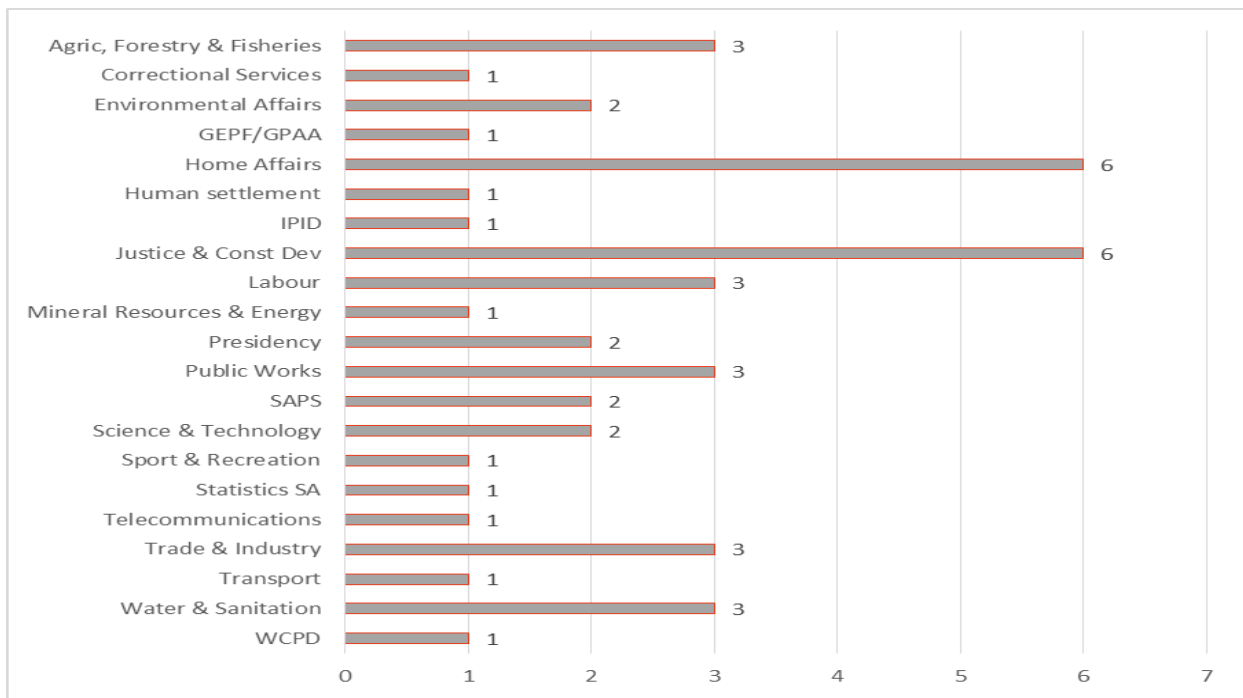


Figure 2: Total number of irregular appointment cases per national department - 2011 to 2015

Figure 2 above reflects the total number of irregular appointment cases investigated by the PSC per national department for a period of five years. The departments of Justice

and Constitutional Development and Home Affairs took a lead with 6 cases each; followed by Water & Sanitation, Agriculture, Forestry & Fisheries, Labour, Public Works and Trade & Industry with 3 cases each. Environmental Affairs, The Presidency, SAPS, and Science & Technology recorded 2 cases each; while the remaining departments recorded 1 case each.

Provincial Departments

According to **Figure 3** below, in 2011 the PSC dealt with 4 cases of irregular appointments, in 2012 the number increased to 13. Only 4 cases were dealt in 2013 and 2014. Similar to national departments, there was a sharp increase to 35 cases in 2015.

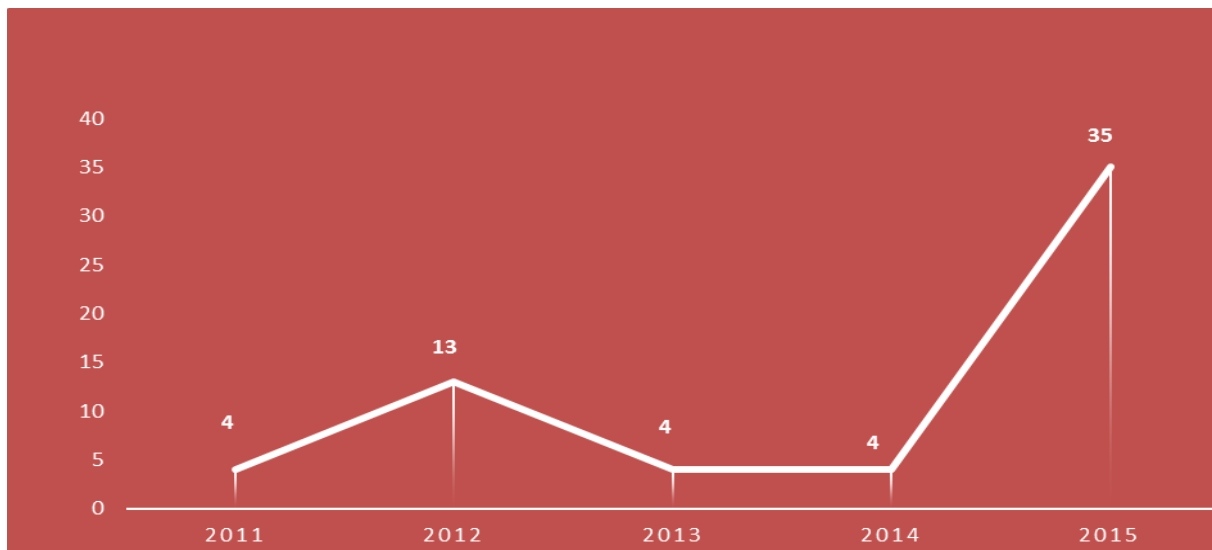


Figure 3: Total number of irregular appointment cases at provincial level - 2011 to 2015

As indicated in **Figure 4** below, the PSC dealt with irregular appointment cases from 8 of the nine provinces. Limpopo recorded the highest number of irregular appointments cases (30 cases), followed by Gauteng Province with 14 cases. The Eastern Cape and Mpumalanga had 6 cases each, whereas KZN, Northern Cape, North West and Western Cape each had 1 case for the same period.

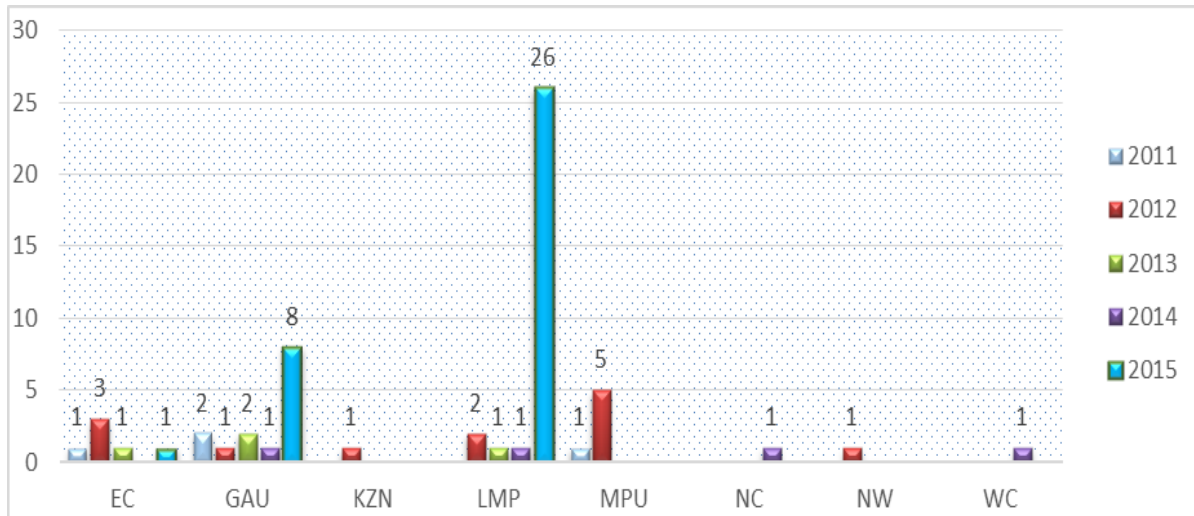


Figure 4: Total number of irregular appointment cases per province - 2011 to 2015

Figure 5 below indicates that the highest number of irregular appointment cases was recorded in 2015 and in two provinces, namely, Gauteng (8) and Limpopo (26).

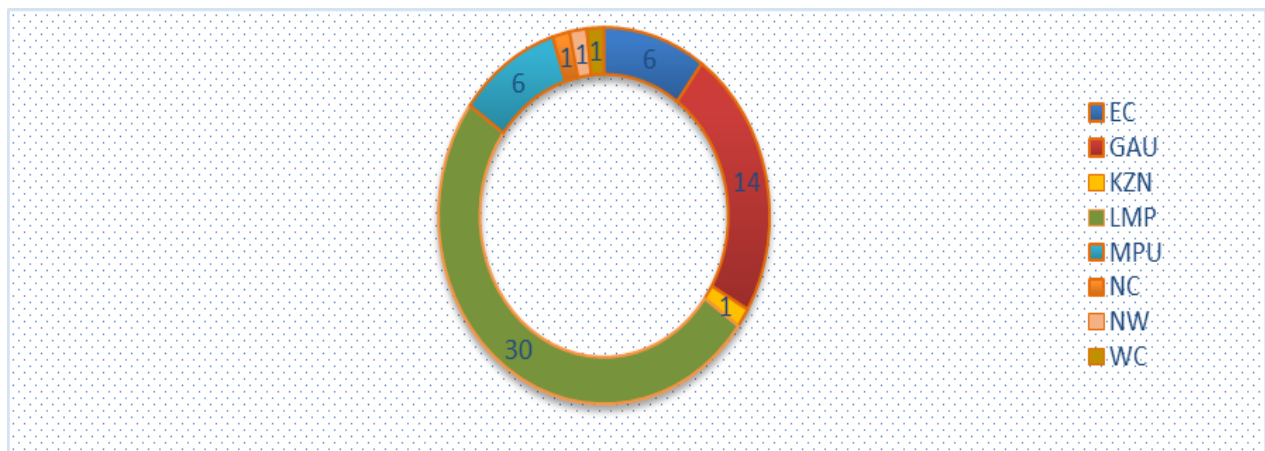


Figure 5: Overview of irregular appointment cases per province - 2011 to 2015)

Comparison between national and provincial cases of irregular appointments

Figure 6 below compares the total number of total irregular appointment cases investigated by the PSC from national and provincial departments over the five year period. Provincial departments recorded a slightly higher number of irregular appointment cases when compared to national departments.

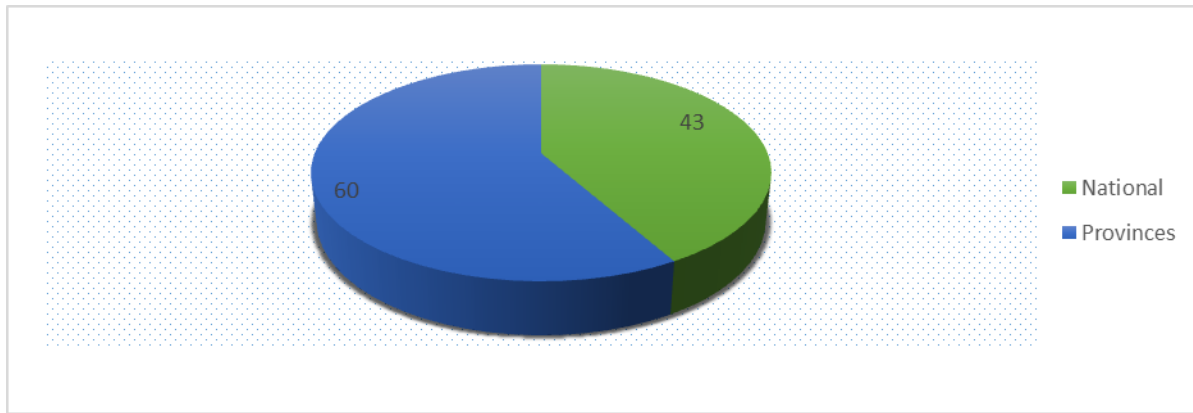


Figure 6: Comparison between national and provincial cases of irregular appointments - 2011 to 2015

3.2.2 Factors leading to irregular appointments and discussion of findings

The PSC's investigations identified various factors that contribute to irregular appointments. In some cases, appointments would be declared irregular due to two or three of the factors, whereas in some instances, multiple factors were identified. The following factors are the main contributors to irregular appointments:

- (i) Non-compliance with departmental recruitment and selection policy and procedure and DPSA directives: The study found out that there was a failure to follow process and comply with department's own recruitment and selection policy in the recruitment and selection of staff. For instance, if the policy states that employment equity will be considered as a priority in the appointment of individuals but this is applied inconsistently throughout the department. This has an impact on complying with government wide legislation, morale of the staff and s195 (1) (h) and (i) of the Constitution.
- (ii) Disregard of minimum requirements as per advert when selection committees are shortlisting: Evidently, it was discovered that there is a failure by selection panels and departments to comply with the requirements of the advert in the filling of vacant posts. For example, selection and appointment of individuals who do not meet the minimum qualifications and experience requirements stipulated in the advertisement. The implications of this are that a non-qualifying person would be appointed in a position; when this person cannot deliver the department will have to embark on a

process of progressive performance management which could be time consuming whilst service delivery is suffering. Also this could have implications on other employees' workload as they would be expected to assist with the work of this individual, resulting in employees suffering from burnout. Also the appointment could be challenged and that on its own could be costly if it goes to court. It is very concerning when non-compliance with minimum requirements is done for key strategic positions that require specialized qualifications and skills such as financial expertise and engineering. Compliance with the advertisement is key and the only solution.

- (iii) Poor record keeping in throughout the recruitment and selection process: In some cases, the study found that there was non-availability of documents that relate to the entire recruitment and selection process. For example, copy of advertisement for the post, minutes of the interviewing panel, submission requesting approval to appoint and appointment letters. This shows that the filing/record system is not functional and this could cost departments if cases go through a litigation process.

In the absence of supporting documentation, it may be assumed that the information was conveniently misplaced to cover up for non-compliance or questionable decisions. The PSC has often recommended that departments must have proper filing systems and should liaise with the national archives to be trained on proper filling and archiving. In line with that, there was a failure to indicate in the submissions files and minutes, full information about the selection committee members and the proceedings of the selection process. The implication of this is that there would be limited or no documentary proof of the selection process and the records of decisions taken and the context under which such decisions were taken.

- (iv) Failure to register applications in the application master list and no comments on why applicants are not shortlisted: The study established that some departments failed to develop a master list containing the names of all applicants and relevant information about each applicant as proof that the screening process was undertaken. The lack of such a list opens up the process to all sorts of manipulation. As a result, it is always difficult for departments to explain why certain individuals

were disqualified or not eligible for shortlisting and appointment. It is thus important for departments to keep records of applications received for any post that is advertised for accountability purposes.

- (v) Non approval of changes to Selection Committee members and post-facto approval of Selection Committee members: The study found problems with the constitution of selection panels. Particularly, the PSC has observed that in some instances panels are changed without the necessary approvals. In some cases, the composition of approved panels did not comply with prescripts in the sense that panel members would comprise of people who are the same level with the post to be filled, whereas the policy requires that some panel members must be a level higher than the post.

Continuation of this practice leads to fruitless expenditure should the process be challenged and nullified due to lack of approvals for panels or non-compliant composition of panels. Moreover, members of the selection panel making discriminatory remarks during the selection process such as, “certain applicants should they be offered the post might not stay for long in their positions” without any convincing argument to support the statement, and yet such statements are recorded as reasons for a candidate not to be considered despite their performance during the selection process.

- (vi) Job Evaluation not conducted by departments: Failure by the departments to conduct job evaluation before a post is advertised and filled was revealed by the study. The findings also revealed that certain posts were upgraded to the last notch of the specific salary level and no evidence was available to prove that the job was evaluated to determine its job weight.

- (vii) Non-compliance with selection process when headhunting: Promotion of certain officials without subjecting them to a process of interviewing and skills testing in the name of headhunting has also been highlighted by the study. The implication of this is non-compliance with the Public Service Regulations, which requires that irrespective of the recruiting method used, candidates must be subjected to a

selection a criteria. Also this could create grievances the workplace as it is not consistent with public service prescripts.

- (viii) Selection Committee not executing its responsibility fully in recommending a most suitable candidate to the appointing authority: The study documented problems with the abdication of responsibilities by the selection panel. For example, the selection panel recommended more than one candidate suitable for the post. In so doing, the selection panel failed to exercise their power to select the best candidate suitable for the job. By implication, the panel abdicated their responsibility to recommend a suitable candidate to the approving authority, leaving the approving authority with no choice but to decide on the best candidate for the post and approve the appointment as well.

To ensure objectivity, the approving authority is not supposed to play two roles: that of recommending and approving, but in terms of prescripts they may give reasons for not agreeing with the recommendations selection panel. The study further revealed that there were approvals of documents that contained insufficient or incomplete information. For example, the selection panel made no recommendation on the best candidate to be appointed to the specific post and this was approved without any request for clarity on the matter.

In addition, the study found that there was failure by the selection panel to document the reasons or provide motivation why the second best candidate was selected for appointment over the most suitable candidate who ranked the highest in terms of scoring. Implications are that when the process is challenged, the department could find itself having to appoint the 1st best scoring candidate in the same positions or compensate them. Law requires that for every decision taken, reasons must be provided and be available for scrutiny when the need arises.

- (ix) Competency assessment outcomes not certified by the service provider but utilised by departments to make a final decision to appoint: It was documented that departments take decisions that are based on unsigned competence assessments results by the service provider.

- (x) Failure to verify qualifications and/or conduct reference and security checks as a standard rule: Legislation requires scrutiny of documentation is critical before approval is granted otherwise departments could be in trouble when things are queried. The study found out that there was failure by departments to verify qualifications and/or conduct reference and security checks as a standard rule. The implications of this conduct are the cost associated with “handshake” and processes of disciplinary and dismissing the candidates which are resources consuming.
- (xi) Failure to conduct competency assessment before appointing SMS members: The findings have also revealed that, certain people at SMS level are appointed before they have been taken through the competency assessment.
- (xii) Officials with no delegated authority signing official documents: Departments have been found to allow certain people who hold no authority to sign official documents such as employment contracts. While the legality of the document can be questioned, the appointed candidate, if wrongly appointed cannot held liable for such administrative errors especially if they have already resigned from the previous employer. In the end, the department would be compelled to accommodate such a person or to compensate them somehow.

3.3 Conclusion

It can be concluded from the discussions that irregular appointments are as a result of non-compliance with legislative and regulatory frameworks and the processes that have not been followed correctly by officials who are involved in such processes. It is clear that there is a need for departments to develop internal controls to safeguard the integrity of recruitment and selections processes. Continuous monitoring of the trends of irregular appointment is conducted so that where necessary capacitation of officials on R&S processes is conducted; and where it is proven that the intention is there not to comply with legislation and processes then disciplinary measures should be considered. Human Resource Practices are highly regulated in the public service and as such are a subject of litigation; therefore departments must ensure that rules are followed.

CHAPTER 4: CONCLUSION AND RECOMMENDATIONS

4.1 Introduction

The importance of recruiting, selecting and appointing appropriately skilled and competent people into a department cannot be over emphasized. But equally important, especially in the Public Service, is the need to ensure that the recruitment and selection processes, and the ultimate outcome of appointing, are compliant with prescripts. Failure to ensure compliance with prescripts would result in the irregular appointments, irrespective of the skills and competence of the appointed candidates.

4.2 Conclusion

The findings in this factsheet have revealed that departments continue to fail to recognize the critical importance of complying with recruitment and selection policies and prescripts. The information gathered from various cases investigated by the PSC confirm that the inability of departments to comply with recruitment and selection policies and procedures is a recipe for irregularities in the appointment of eligible and fully qualified individuals. These irregularities, if not corrected, ultimately result in low staff morale, low performance levels and waste of financial resources and time due to grievance, disputes and litigation processes.

Public Service departments like all other organizations globally, have a responsibility to ensure that a fair and just recruitment and selection process that is compliant with applicable prescripts is followed consistently. It should be noted that failure of officials to comply with policies and processes is what creates irregularities in appointments and not the lack of policies and procedures. Therefore it is incumbent to each department to ensure that officials have the capacity and commitment to adhere to relevant legislative and regularity prescripts.

4.3 Recommendations

In light of the discussions above and the fact that this factsheet has been produced using information from secondary sources, that is, existing investigation reports with

findings and recommendations that were presented already to the relevant departments, the following recommendations are made:

- 4.3.1 The PSC through its provincial and cluster approach should continue to engage and sensitise the executives and management of departments on the extent of irregular appointment cases reported and investigated by the PSC with a view to encourage the executives and management to monitor trends and ensure that disciplinary measures are implemented where non-compliance with legislative and regulatory framework and processes persist;
- 4.3.2 Provincial and Cluster Commissioners should encourage departments to run internal workshops on recruitment and selection processes and procedures for HRM components and officials involved in selection committees. The PSC or even DPSA could be approached to facilitate such workshops; and
- 4.3.3 Provincial and Cluster Commissioners should, in instances of substantiated cases on irregular appointment, engage with the executive and management of the institutions after communicating the findings and recommendations in writing as a mechanisms to minimize future transgressions.