

Our Ref: DC Board R01/2020	Your Ref: Council 96.1-30/08/2019
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To: THE SPEAKER
Item to Council

REPORT OF THE DISCIPLINARY BOARD ON A MATTER REFERRED FOR INVESTIGATION BY COUNCIL

1. PURPOSE

To report back to Council on a matter referred to the Disciplinary Board for investigation as per Council execution letter number 96.1-30/08/2019.

2. DISCUSSION

The Disciplinary Board (DC Board) was appointed by Mangaung Metro Council in terms of the Municipal Regulations on Financial Misconduct and Criminal Proceedings. The members of the Board are:

Ms. Nozuko Mdaka (Chairperson)(External and Audit Committee Member)
Mr. TM Moremi (Member)(External, from Provincial Treasury)
Adv. C Naidoo (Member)(Internal, GM: Legal Services)
Mr. GA Ntsala (Member)(Internal, GM: Internal Audit)

Paragraph 4(2) of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings states that "A Disciplinary board is an independent advisory body that assist the Council with the investigation of allegations of financial misconduct, and provide recommendations on further steps to be taken regarding disciplinary proceedings against an alleged transgressor."

The DC Board received a report(i.e. Council execution letter with recommendations of MPAC to Council attached) from the City Manager's office dated the 4th September 2019 and this report was addressed to the Head: Office of MPAC. Paragraph 1.3 of this council execution letter reads as follows "***That the following irregular expenditure be referred to the Disciplinary Board for further investigations***" (refer to Annexure A attached).

Notwithstanding the fact that the execution letter was addressed to MPAC, the DC received it directly from the City Manager. The matter referred to the DC Board was discussed by the

members during Board's meeting that took place on the 4th October 2019 and the following decisions were taken:

1. That the matter referred to the Board falls outside the scope and competency of the Board as it **relates to the investigations of irregular expenditures;**
2. That the Board members' interpretation of the Board's roles and responsibilities as per the ruling in paragraph (1) be further confirmed with National Treasury;
3. That a workshop on the clarification of roles and responsibilities of the DC Board be arranged with National Treasury for the Councilors and the management;
4. That after engagement with National Treasury, a report conveying the decision of the DC Board on the matter be prepared and submitted to Council.

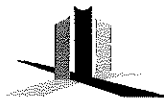
The workshop on the clarification of roles and responsibilities of the DC Board was arranged with National Treasury for the Councilors and management on the 6th November 2019. During the workshop, the matter above was raised with a representative from National Treasury who confirmed the decision of the DC Board that the matter referred to it indeed falls outside its scope and competency.

National Treasury further emphasized in terms of the Government Gazette, No. 37699 of 30 May 2014, (Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings) that, a DC Board is an independent advisory board that assists the council with the **investigation of allegations of financial misconduct, and provide recommendations on further steps to be taken regarding disciplinary proceedings or any other relevant steps to be taken.**

It should also be mentioned that, in terms of regulation 3, Chapter 2 of the Regulations, before a matter is referred to the DC Board for investigation, it should have gone through the following reporting protocols;

Reporting of allegations of financial misconduct

- (1) Any person must report an allegation of financial misconduct against-
 - (a) the accounting officer, a senior manager or the chief financial officer of a municipality, to the municipal council of the municipality, the provincial treasury and the national treasury;
 - (b) an official of a municipality other than its accounting officer, to that accounting officer;
 - (c) the accounting officer of a municipal entity, to the chairperson of the board of directors, the mayor and the accounting officer of the entity's parent municipality;
 - (d) an official of a municipal entity other than its accounting officer, to that accounting officer.



(2) The mayor, the accounting officer or chairperson of the board of directors, as the case may be, must table an allegation referred to in sub-regulation (1) before the municipal council or, board of directors in the case of municipal entities, not later than seven days after receipt thereof or at the next sitting of the council or the board of directors.

(3) The person to whom an allegation of financial misconduct has been reported in terms of sub-regulation (1) must ensure that the report is treated in a confidential manner.

(4) This regulation must not be read as preventing a person from laying a criminal charge with the South African Police Service against any councillor, member of the board of directors of a municipal entity, or official of a municipality or municipal entity in relation to any conduct that may constitute an offence in terms of Part 2 of Chapter 15 of the Act (MFMA).

(5) An official against whom an allegation of financial misconduct is made must be given an opportunity to make written representation to the municipality or municipal entity as to why he or she should not be suspended, within seven days of being notified of the allegation.

The above clearly indicates the reporting process of any allegations of Financial misconduct against a official/person.

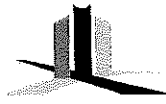
It is against this background that, the DC Board took a decision to refer the matter back to Council to finalize the investigation in terms of MFMA Section 32 regarding Irregular expenditure and only refer to the DC Board cases of allegations of financial misconduct for further investigations by the Board after the above-cited reporting protocols have been followed.

3. RECOMMENDATIONS

The DC Board, therefore, submit the following recommendations to the Mangaung Metro Municipality Council:

a) Council to note that the objective and mandate of the Disciplinary Board is to receive and investigate allegations of financial misconduct within the municipality.

b) That, the matter as referred to the Board be referred back to MPAC to finalize the investigation of irregular expenditures as per MFMA section 32(2) and should MPAC establish any elements of financial misconduct, the matter should then be referred to the disciplinary Board for investigation through Council, after having followed established reporting protocols as outlined under regulation 3, Chapter 2 of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.



4. CONCLUSION

As a newly established Board, the Board has experienced some teething problems, however, the DC Board remains committed in performing its functions as outlined in the regulations without any fear, favor or prejudice.

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Nozuko Mdaka
CHAIRPERSON
Disciplinary Board

Date: 09 March 2020

