

The National Empowerment Fund stands by its decision to decline the funding application by Ms Naomi Ngwenya

Following a series of media reports, the National Empowerment Fund (NEF) has learnt with shock and concern that the Public Protector (PP) called a media briefing on 30 September 2014 where she tabled a report in respect of the complaint by Ms Naomi Ngwenya on behalf of Best Care Medical Supplies. The PP issued the report without the courtesy of submitting it to the NEF as an interested party.

Having noted the PP's media factsheet on the matter, we regret that the reported findings are inconsistent with the facts as they are known and recorded by the NEF. The NEF cooperated fully and without reservation throughout the process of the PP's investigation of the matter, and availed a body of information and facts, some of which regrettably did not make it into or was misrepresented in the media factsheet. The NEF respectfully believes that had the PP considered this information impartially, a fairer and materially different outcome may have resulted.

The last application to the NEF for funding by Ms Naomi Ngwenya was declined by the NEF. The NEF stands by its decision in this regard. A total of 3 separate applications were made by Ms Ngwenya to the NEF, all of which were declined for different reasons. Each of the 3 applications were issued with a unique reference number, as is standard practice. The NEF respectfully believes that the PP erred in treating these applications for funding as though they were one continuous application for which the complainant had to "wait for a period of twenty-eight months". The NEF consistently responded promptly to the applicant.

Ms Ngwenya subsequently submitted a complaint to the Office of the Public Protector and the NEF then co-operated fully with the Public Protector on this matter.

The NEF was never informed about the finalisation of the report or the media briefing. The NEF has since 30 September 2014 been requesting a copy of the report from the Public Protector and the last email response by the Deputy Public Protector, Advocate Kevin Malunga, around 11h35 on 01 October 2014, was that the report had not been finalised by the Public Protector and would be sent to the NEF after it had been quality-checked. He could not commit as to when that would take place.

The NEF is extremely disappointed by the conduct of the Public Protector in addressing the media on a report which has not been finalised and as such the NEF is unable to respond to the issues and to queries being raised by the media because we have not yet been provided with a copy of the report and the timing of release of that report cannot be confirmed by the Public Protector. As at the end of business on 01 October 2014, the NEF had still not received a copy of the report from the Public Protector and had received no indication as to when the same would be made available. The Public Protector therefore misrepresented facts in her factsheet in saying that she had issued a report on this matter. The report is yet to see the light of day.

The Public Protector issued what she termed as a “factsheet” to the media during her briefing and the NEF submits that the factual position stated in that factsheet is incorrect. The NEF disagrees with the reported findings thereof.

In terms of the NEF’s standard operating procedures, the individuals behind the entities that apply for funding are required to complete an application form where they declare, among other things, their BEE status. The NEF is mandated to fund black South Africans exclusively.

Ms Naomi Ngwenya declared in her application form that she is a black person as defined in the Broad Based Black Economic Empowerment Act which defines Black People as *“African, Coloured and Indian natural persons who are citizens of the Republic of South Africa by birth or by descent as well as natural persons who acquired citizenship by naturalisation prior to 27 April 1994”*. The NEF approved the transaction based on its commercial merits and this declaration, and informed Ms Ngwenya that the approval was not final but was subject to a range of suspensive conditions, including verification by the NEF of the applicant’s declaration. This is in the normal course of the NEF’s procedures.

Upon verification of the applicant’s claims by the NEF’s legal officers as part of regular compliance processes, it was discovered that the applicant was only naturalised in 1999. It must be stated that the applicant never disclosed this fact to the NEF and instead made a declaration to the contrary in writing. The NEF had no reason not to trust Ms Ngwenya and therefore proceeded based on her representation, which was subsequently found to have been false. Ms Ngwenya personally signed the application form containing the declaration and she has since admitted that the signature on the form is hers.

It is our submission that the NEF’s systems and processes are robust and that the NEF has sufficient checks and balances in place to ensure that we are responsive to the funding requirements of black entrepreneurs, and that where there are misrepresentations they are identified before the funds are disbursed. This includes exercising the requisite diligence to safeguard public funds against unscrupulous practices. It is for this reason, among others, that the NEF has secured unqualified external audit opinions for 9 years running.

The NEF denies that it committed any act of maladministration as Ms Ngwenya had several opportunities to declare her correct BEE status but failed to do so, and instead misrepresented the facts. She is therefore the author of her own prejudice. The NEF’s robust processes detected the misrepresentation before any funds were disbursed to Ms Ngwenya, and therefore the taxpayer’s moneys were preserved.

The NEF is in the process of consulting its lawyers to advise on the conduct of the Public Protector and on the rights of the NEF. It is unfortunate that had the Public Protector provided the report timeously, the NEF would not have had to incur unnecessary legal and advisors’ costs.

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