



Report on Financial Misconduct for the 2007/2008 Financial Year

Public Service Commission

March 2009



Vision

The Public Service Commission is an independent and impartial body created by the Constitution, 1996, to enhance excellence in governance within the Public Service by promoting a professional and ethical environment and adding value to a public administration that is accountable, equitable, efficient, effective, corruption-free and responsive to the needs of the people of South Africa.

Mission

The Public Service Commission aims to promote the constitutionally enshrined democratic principles and values in the Public Service by investigating, monitoring, evaluating, communicating and reporting on public administration. Through research processes, it will ensure the promotion of excellence in governance and the delivery of affordable and sustainable quality services.



Report on Financial Misconduct for the 2007/2008 Financial Year



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Custodian of Good Governance



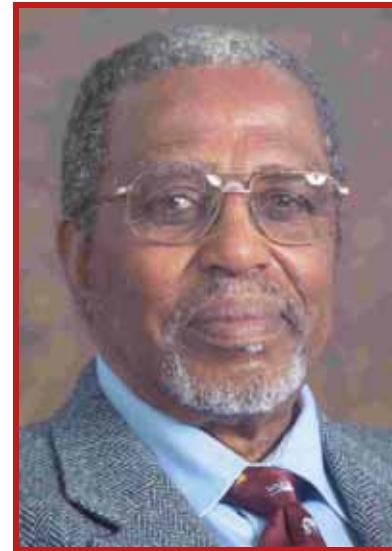
Foreword

A key pillar of public accountability is the effective, efficient and economic use of public resources. Sound financial management practices are required if such accountability is to be effectively discharged. To this end, government departments must apply effective controls and put in place mechanisms to identify and combat risks associated with their financial management.

A key risk associated with financial management emanates from the human element. Public servants manage public finances and are susceptible to a variety of risks. Public servants can be faced with the temptation of enriching themselves through corrupt practices or unethical behaviour at the expense of the public. On the other hand, incompetence on the part of public servants can result in neglect, inefficiencies and ineffectiveness. Both sets of factors have negative consequences in the handling of public funds and sound financial management. It is therefore of utmost importance that financial management, and especially financial misconduct, is placed under intense scrutiny, and is subjected to rigorous monitoring.

Since the 2001/2002 financial year, the Public Service Commission (PSC) has been monitoring misconduct reported to it by departments, and on an annual basis produces oversight reports on financial misconduct in the Public Service. These reports have heightened awareness of the negative impact of financial misconduct on service delivery and it is the hope that departments will address the issues, and in so doing, promote greater accountability and transparency in financial management.

The PSC is pleased to present this report on financial misconduct in respect of the 2007/2008 financial year, and trusts that the findings and recommendations in this report will assist departments in strengthening risk management, and in formulating responsive fraud prevention plans. Through regular reporting on financial misconduct, the PSC aims to encourage a culture supportive of transparent and efficient utilisation of state resources.



A handwritten signature in black ink, which appears to read 'Sangweni'.

PROF SS SANGWENI
CHAIRPERSON: PUBLIC SERVICE COMMISSION

Table of Contents

EXECUTIVE SUMMARY	vi
CHAPTER 1: INTRODUCTION	1
1.1 Background	2
1.2 Purpose of the report	3
1.3 Mandate of the Public Service Commission	3
1.4 Outline of the report	5
CHAPTER 2: METHODOLOGY	6
2.1 Introduction	7
2.2 Regulatory framework relating to Financial Misconduct	7
2.3 Definition of financial misconduct	8
2.4 Reporting format and establishment of a Database	8
2.5 Collation of inputs from departments	9
2.6 Responses from National and Provincial Departments	9
2.7 Limitations experienced	14
CHAPTER 3: STATISTICAL OVERVIEW OF THE 2007/2008 FINANCIAL YEAR	15
3.1 Introduction	16
3.2 The number of employees charged with financial misconduct	16
3.3 Types of financial misconduct reported	24
3.4 Levels of employees charged with financial misconduct	25
3.5 Gender of employees charged with financial misconduct	27
3.6 Outcome of financial misconduct cases	28
3.7 Sanctions imposed in cases of financial misconduct	29
3.8 Cost of financial misconduct	30
3.9 Criminal Proceedings instituted against employees charged with financial misconduct	38
CHAPTER 4: TREND ANALYSIS OF CASES REPORTED SINCE THE 2001/2002 FINANCIAL YEAR	41
4.1 Introduction	42
4.2 Decrease in financial misconduct cases for the 2007/2008 financial year	42
4.3 Decrease in cases in the categories “fraud” and “theft”	43
4.4 Increase in the percentage of SMS members charged with financial misconduct	44
4.5 Increase in financial misconduct cases in respect of males	45
4.6 Outcome of cases of financial misconduct remains constant	46
4.7 Increase in discharge from the Public Service as an appropriate sanction	47
4.8 Cost of financial misconduct lowest in four years	49
4.9 Decline in rate at which criminal proceedings are taken in cases of financial misconduct	49
4.10 Rate of recovery of debt	50

CHAPTER 5: DATA VERIFICATION 52

5.1	Introduction	53
5.2	Data verification process	53
5.3	Challenges faced by departments in the collation of data on financial misconduct	53

CHAPTER 6: RECOMMENDATIONS AND CONCLUSION 58

6.1	Introduction	59
6.2	Define financial misconduct	59
6.3	Improving investigative capacity	59
6.4	Strengthening implementation of fraud prevention plans and risk assessment	59
6.5	Recovery of debt	59
6.6	Improved reporting on the recovery of debt	60
6.7	Establishing departmental databases on financial misconduct	60
6.8	Define when a case is finalised	61
6.9	Request for assistance from the PSC	61
6.10	Conclusion	61

Annexure A 62

LIST OF TABLES

Table 1:	Reports received from National Departments	9
Table 2:	Reports received from Provincial Administrations	10
Table 3:	Types of financial misconduct reported	24
Table 4:	Cost of financial misconduct reported at national level	31
Table 5:	Departments that had not made any recovery	32
Table 6:	Cost of financial misconduct reported by the Eastern Cape Province	33
Table 7:	Cost of financial misconduct reported by the Free State Province	33
Table 8:	Cost of financial misconduct reported by the Gauteng Province	34
Table 9:	Cost of financial misconduct reported by the KwaZulu-Natal Province	34
Table 10:	Cost of financial misconduct reported by the Limpopo Province	35
Table 11:	Cost of financial misconduct reported by the Mpumalanga Province	35
Table 12:	Cost of financial misconduct reported by the North West Province	36
Table 13:	Cost of financial misconduct reported by the Northern Cape Province	37
Table 14:	Cost of financial misconduct reported by the Western Cape Province	37
Table 15:	Individual amounts exceeding R100 000.00 not reported	40

LIST OF FIGURES

Figure 1:	Number of cases at national level and provincial level	16
Figure 2:	Number of cases at national and provincial level over the past five financial years	17
Figure 3:	Number of cases at national level	17
Figure 4:	Number of cases reported at provincial level	18
Figure 5:	Number of cases reported by the Eastern Cape Province	18
Figure 6:	Number of cases reported by the Free State Province	19

Figure 7:	Number of cases reported by the Gauteng Province	19
Figure 8:	Number of cases reported by KwaZulu-Natal Province	20
Figure 9:	Number of cases reported by the Limpopo Province	21
Figure 10:	Number of cases reported by the Mpumalanga Province	21
Figure 11:	Number of cases reported by the North West Province	22
Figure 12:	Number of cases reported by the Northern Cape Province	22
Figure 13:	Number of cases reported by the Western Cape Province	23
Figure 14:	The types of financial misconduct reported by departments for the 2007/2008 financial year	24
Figure 15:	Breakdown of fraud and theft cases at national/provincial level	25
Figure 16:	Salary levels of employees charged with financial misconduct	26
Figure 17:	Comparison of the percentage of the total number of employees per salary category and the percentage of the total number of finalised financial misconduct cases reported	26
Figure 18:	Gender of employees in respect of financial misconduct cases	27
Figure 19:	Comparison of the percentage of the total number of employees in relation to gender and the percentage of the total number of finalised financial misconduct cases reported	27
Figure 20:	Percentage of the types of financial misconduct in respect of gender	28
Figure 21:	Types of outcomes of finalised financial misconduct cases reported	28
Figure 22:	Outcome of financial misconduct cases for the 2007/2008 financial year	29
Figure 23:	Sanctions imposed in financial misconduct cases	30
Figure 24:	Cost of financial misconduct reported at provincial level	32
Figure 25:	Breakdown of the responses by departments in regard to further action taken against employees	39
Figure 26:	Number of reported cases for the financial years 2001/2002 until 2007/2008	42
Figure 27:	Number of cases on national and provincial level over the past five financial years	43
Figure 28:	Fraud and theft cases reported for the financial years 2001/2002 until 2007/2008	44
Figure 29:	Number of cases per salary category	45
Figure 30:	Gender of employees in respect of financial misconduct cases in the 2005/2006 and 2006/2007 financial years	45
Figure 31:	Outcome of financial misconduct cases for the past five financial years	46
Figure 32:	Sanctions imposed in financial misconduct cases over the past five financial years	48
Figure 33:	Total cost of financial misconduct per financial year	49
Figure 34:	Criminal proceedings instituted against employees charged with financial misconduct	49
Figure 35:	Percentage of the amounts recovered by departments vs the amounts not recovered over the past three financial years	50

GLOSSARY OF TERMS

Dti	Department of Trade and Industry
DOJCD	Department of Justice and Constitutional Development
DPISA	Department of Public Service and Administration
DWAF	Department of Water Affairs and Forestry
GG	Government Garage
KZN	KwaZulu-Natal
NACH	National Anti-Corruption Hotline
OPSC	Office of the Public Service Commission
PFMA	Public Finance Management Act, 1999
PPCA	Prevention and Combating of Corrupt Activities Act, 2003
PSC	Public Service Commission
SAPS	South African Police Service
SIU	Special Investigative Unit
SMS	Senior Management Service



Executive Summary

1. INTRODUCTION

Limited state resources coupled with service delivery backlogs from past inequities places a stringent requirement on departments to ensure that public funds are managed in an efficient, effective and economic manner. Given such context, it is therefore not surprising that financial management in the Public Service is placed under intense scrutiny and a sharp focus is placed on financial misconduct.

As custodian of good governance, the Public Service Commission (PSC) prides itself on its promotion and monitoring of the efficient, economic and effective use of resources. Through its state of the Public Service reports the PSC on an annual basis offers a high level analytical overview of this principle. In addition to this, since the 2001/2002 financial year the PSC has published annual oversight reports relating to Financial Misconduct. This report has become a recognised research tool with stakeholders, and is an important indicator on the efficient, economic and effective use of financial resources in the Public Service, as well as the ethical behavior of public servants.

2. METHODOLOGY

National and provincial departments are required to submit a report on finalised financial misconduct cases to the PSC for every financial year. Even if no financial misconduct cases were finalised a **nil return** must be submitted. A circular was disseminated to all national and provincial departments requesting reports for the 2007/2008 financial year. A format for reporting financial misconduct has been made available to departments since the 2002/2003 financial year and has subsequently been made available on the PSC's Website.

On the expiry of the due date for inputs, further follow-ups were made telephonically. As a result of poor responses by national and provincial departments, reminders were sent to those departments that failed to provide the PSC with a response. Departments were requested to provide inputs by no later than 18 July 2008. Further telephonic follow-ups were subsequently made to departments, requesting them to provide inputs. All the national departments submitted their inputs for the 2007/2008 financial year, and of the 108 provincial departments 107 departments have provided inputs to the PSC, one department, namely the Royal Household in KwaZulu-Natal Province did not provide an input to the PSC.

3. STATISTICAL OVERVIEW

3.1 The number of employees charged with financial misconduct

A total of **868** cases of financial misconduct were reported for the 2007/2008 financial year, of which **316** (36%) cases were reported by national departments and **552** (64%) cases were reported by provincial departments. During the previous financial year (2006/2007), a total of 1042 cases were reported by national (370) and provincial (672) departments.

The Department of Justice and Constitutional Development (DOJCD) reported 113 cases, which represents the highest number of cases for the 2007/2008 financial year. This trend is consistent with the findings made in the 2005/2006 and 2006/2007 reports where the DOJCD also reported the highest number of cases. The KwaZulu-Natal Province reported the highest number of cases (193), representing 35% of the total number of cases reported by provinces. This was followed by Western Cape Province with 93 (17%) of the total number of cases reported by the provincial departments. North West and Northern Cape provinces reported the least number of cases namely 20 (4%) and 8 (1%), respectively.

3.2 Types of financial misconduct reported

Cases in the category “*fraud*” comprise a significant portion 428 (49%) of the overall number of cases reported. This figure was even higher in the 2006/2007 financial year, where this category accounted for 615 (59%) of the reported cases. Although the number of cases has declined in the 2007/2008 financial year, the reported cases are still significantly high. The category “*theft*” comprised the second highest number of cases at 113 (13%). As with fraud, the figures relating to theft were even higher in the 2006/2007 financial year, where theft accounted for 136 (13.1%) of the reported cases. The KwaZulu-Natal Province followed by National Departments have reported the highest number of fraud and theft cases at 177 (33%) and 169 (31%) cases respectively. The high number of cases reported in the KwaZulu-Natal Province, is as a result of the social grant fraud cases reported by the Department of Health. With regard to the 169 cases reported by National Departments, 60 (36%) cases emanated from the DOJCD.

3.3 Levels of employees charged with financial misconduct

The percentage of the total number of employees employed at salary levels 1 and 8 (85.9%) as at 30 May 2008, correlates closely with the percentage of finalised misconduct cases reported on this level (86.2%). In other words, although the highest number of cases was reported on salary levels 1 and 8, proportionally these levels represent the highest number of employees in the Public Service. Using the same comparison between the total number of employees at the Senior Management Service (SMS) level (0.7%) and the percentage of the total number of finalised financial misconduct cases in respect of SMS members (2.5%) for the 2007/2008 financial year the outcome suggests that employees in the SMS have a greater propensity to commit financial misconduct. This is a worrying trend given that the SMS plays a critical role in the promotion and maintenance of sound financial management, and are the primary stewards of public resources.

3.4 Gender of employees charged with financial misconduct

Of the **868** cases reported, departments did not indicate the gender in 7 (1%) cases. Financial misconduct was committed by males in 425 (49%) of the reported cases, and by females in 436 (50%) of the reported cases. Of the 436 (50%) cases involving females, incidences of fraud constitute 296 (71%) of the total number of cases. In respect of the 425 (49%) cases involving males, 130 (32%) of the reported cases involved incidences of fraud. The 169 cases involving social grant fraud in respect of females comprised 57% of the cases in the category “*Fraud*”.

3.5 Outcome of financial misconduct cases

Of the **868** finalised financial misconduct cases reported, employees were found guilty of misconduct in 709 (82%) cases. The percentage of employees found guilty is very similar to the percentage in the 2006/2007 financial year where 859 (84%) of officials charged with financial misconduct were found guilty.

3.6 Sanctions imposed in cases of financial misconduct

For the 2007/2008 financial year, final written warnings were issued in 247 (34.4%) of the cases, and this was the most prevalent sanction imposed upon a finding of guilty. It was followed by 163 (22.7%) cases in which employees were discharged from the Public Service.

3.7 Cost of financial misconduct

The total cost reported by national and provincial departments emanating from unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct reported in respect of the 2007/2008 financial year was **R 21 776 948.93**. During the same financial year, **R 8 805 596.00** (40%) of the **R 21 776 948.93** was recovered from the employees found guilty of financial misconduct or the financial misconduct did not result in any loss to the State. Not all departments indicated the cost of financial misconduct and the amounts that have been recovered. The cost of financial misconduct and the recovery thereof may consequently be more.

3.8 Criminal proceedings instituted against employees charged with financial misconduct

For the 2007/2008 financial year criminal proceedings were instituted against employees in 210 (24%) of the cases. In 505 (58%) of the finalised cases for the financial year 2007/2008, no criminal proceedings were instituted against employees. In 98 cases (11%) departments failed to provide any indication whether criminal or civil proceedings were instituted against employees charged with financial misconduct. Although departments were requested to ensure that if no criminal action was taken against an employee that made themselves guilty of financial misconduct, the reasons for such a decision should be provided, departments failed to provide such information in 442 out of 505 (88%) of the instances. It is therefore not possible to determine the reasons for not instituting criminal action.

4. TREND ANALYSIS OF CASES SINCE THE 2001/2002 FINANCIAL YEAR

4.1 Decrease in financial misconduct cases for the 2007/2008 financial year

During the 2006/2007 financial year, the total number of reported cases was 1042. This was the highest number of reported cases since 2001/2002 when the PSC commenced with the monitoring of financial misconduct. Compared to the 2006/2007 financial year (1042), there has been a 17% decrease in cases of financial misconduct in the 2007/2008 financial year (868). However, there is an overall increase in cases of financial misconduct since the 2001/2002 financial year.

In relation to provincial departments, the Free State (60%), KwaZulu-Natal (35%), Limpopo (42%) and Mpumalanga (45%) provinces had an increase in cases in the 2007/2008 financial year as compared to the 2006/2007 financial year. The Free State Province has since the 2001/2002 financial year sustained a decrease in reported cases for each financial year. However, the current number of 55 cases, represent a sharp increase from the 22 reported in the 2006/2007 financial year. The Western Cape Province, on the other hand, had a substantial decrease in cases from 299 to 93 cases (68%) in the 2007/2008 financial year.

In contrast, the figures relating to the national departments indicate a decline from the 2006/2007 financial year from 370 to 316 during the 2007/2008 financial year, which represents an overall decline of 14%. This decline is welcome as national departments have sustained an annual increase in the number of reported cases since the 2001/2002 financial year.

4.2 Decrease in cases in the categories “fraud” and “theft”


Whilst there is a decrease in cases in the categories “fraud” and “theft” cases, other categories have increased, most notably cases in the category “financial mismanagement”, comprising 13% of the total number of cases. This category was first reported in the 2006/2007 financial year (6.4% of the cases), and has therefore substantially increased in the current financial year.

4.3 Increase in the percentage of SMS members charged with financial misconduct

There has been an increase in the percentage of SMS members found guilty of financial misconduct from the 2006/2007, (1.6%) to the 2007/2008 (2.4%) financial years. Of concern to the PSC is that this is substantially above the percentage of SMS members employed on salary levels 13 to 15 (0.7%) and this gives the impression that SMS members show a greater propensity to commit financial misconduct.

4.4 Increase in financial misconduct cases in respect of males

The gender distribution of employees in respect of financial misconduct cases differs substantially from the previous financial year in that the number of cases reported in respect of males in the 2006/2007 financial year increased from 35% to 49% in the 2007/2008 financial year. It was noted in the 2006/2007 financial year that the social grant



fraud cases had a significant impact on the increase in females found guilty of financial misconduct¹. In the 2007/2008 financial year, the number of social grant fraud cases reported in respect of females (37%) was substantially less as compared to the 2006/2007 financial year (49%), and could be the reason for the decrease in cases involving females.

4.5 Outcome of cases of financial misconduct remains constant

Over the past four financial years, employees have been found guilty following charges of financial misconduct in an average of 81% of the cases. This trend reflects that there was substance in the allegations brought against officials, and portrays positive signals on the application of disciplinary proceedings in the Public Service. In the 2007/2008 financial year, 11% of employees were found not guilty or the cases against them were withdrawn. This trend is similar to the 2005/2006 financial year, where employees were also found not guilty or the cases against them were withdrawn in 11% of the cases.

4.6 Increase in discharge from the Public Service as an appropriate sanction

From the 2002/2003 to the 2005/2006 financial year, discharge from the Public Service remained the most prevalent sanction followed by final written warnings. For the 2006/2007 financial year this trend has changed, whereby final written warnings are the most prevalent (36%) and the same applies for the 2007/2008 financial year (34.4%). In the latter year, however, the sanction of discharge from the Public Service was the second most prevalent at 22.7%.

4.7 Cost of financial misconduct lowest in four years

There is a significant decrease (83%) in the cost of financial misconduct from the 2006/2007 (R130 615 994) to the 2007/2008 (R21 776 948) financial year. The cost of financial misconduct is in actual fact the lowest in four years. Where there has been a spike in the cost of financial misconduct (2004/2005 and 2006/2007 financial years), these incidences were associated with one or two cases involving large amounts of money.

4.8 Decline in rate at which criminal proceedings are taken in cases of financial misconduct

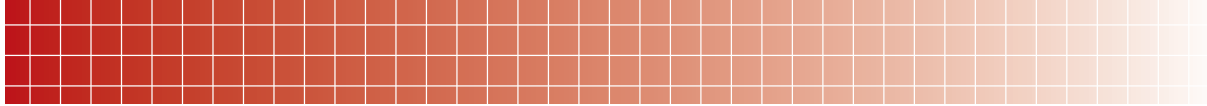
There is a generally low rate at which criminal proceedings were instituted over the past 5 financial years. In this regard, only an average of 32% of the finalised financial misconduct cases, were subsequently reported for criminal proceedings. Although departments were requested to provide the reasons for not taking criminal action, they have generally failed to provide such information. Therefore, as departments failed to provide comprehensive information, it is not possible to accurately determine any trends or the specific reasons for not instituting criminal action.

4.9 Rate of recovery of debt

There has been an increase in the overall rate of recovery from the 2006/2007 financial year to the 2007/2008 financial year from 22% to 40%. This figure is well below the overall recovery rate in the 2004/2005 financial year which was at 50%. However, it should be borne in mind that the above-mentioned figures in actual fact provide a distorted view of the actual rate of recovery as a result of the fact that at the time that departments are required to report to the PSC on the outcome of the disciplinary process, the recovery of the value of the loss or damage has not necessarily taken place.

In the 2006/2007 financial year the total cost reported by national and provincial departments emanating from unauthorised, irregular, fruitless, wasteful expenditure and losses resulting from criminal conduct was **R130 615 994.82** and an amount of **R20 838 681.74** (16% of the total cost) was recovered from the employees found guilty of financial misconduct or the financial misconduct did not result in any loss to the State (e.g. a fraudulent

¹ Overview on Financial Misconduct for the 2006/2007 Financial Year: Public Service Commission, January 2008.



Subsistence and Travel claim is not paid). Most departments do not have records on the recovery of monies recovered after the relevant reporting period, however an additional amount of **R 6 133 516.62** (a further 5%) had been recovered in respect of the 2006/2007 financial year.

5. DATA VERIFICATION

The data verification was conducted in a number of selected departments in order to improve data integrity and at the same time provide guidance to those officials responsible for the completion of the PSC's reporting format on the financial misconduct cases. The following challenges were faced by departments in the collation of data for financial misconduct:

Despite the fact that the PSC's reports on financial misconduct have over the years included the "*types of financial misconduct*", it appears that there is no common understanding by departments as to what constitutes financial misconduct.

Most of the departments visited did not have a centralised database of misconduct cases against which the information provided to the PSC could be verified. Where databases did exist, instances were found where the information captured on the databases was incomplete. As a result of deficiencies, the PSC could not verify important information such as the exact nature of the misconduct (i.e. whether it is related to financial misconduct), whether there has been an appeal in respect of the findings and sanction/s imposed or whether criminal action was taken against the employee.

It was found that there is no common understanding as to when the case should be considered as being finalised. In view of the fact that disciplinary proceedings in cases of misconduct is an internal departmental process, the case is to be considered as finalised on the date the sanction is imposed. Should the official lodge an appeal regarding the matter, then the date of finalisation should be the date on which the official is informed of the outcome of the appeal.

The segregation of functions in dealing with the misconduct cases has led to inaccurate reporting to the PSC.

Although departments maintain separate files in respect of misconduct, in most instances where files were verified, the information contained in the files are not accurately maintained, documents are left loose in the file, and are not filed according to the sequence of events.

6. RECOMMENDATIONS AND CONCLUSION

6.1 Define financial misconduct

Departments are experiencing challenges in defining and understanding what financial misconduct entails. The relevant prescripts that deal with financial misconduct within the Public Service namely, the PFMA and the Treasury Regulations, do not provide for a definition. In the interim, the PSC recommends that the types of financial misconduct as defined in this report (refer to Table 3 in paragraph 3.3) be utilised as a guideline by departments to report finalised financial misconduct cases to the PSC once a case is finalised.

6.2 Improving investigative capacity

It is imperative that departments have adequate strategies and resources to deal with risk associated with financial misconduct, appropriately. Departments should build capacity and dedicate resources to investigate allegations of fraud and corruption, and to respond to complaints promptly and effectively. Departments have the responsibility to create a minimum capability to deal with fraud and corruption, and urgent attention must be given to this.



6.3 Strengthening implementation of fraud prevention plans and risk assessment

With regard to the poorly managed misconduct databases, the PSC recommends that departments should have a systematic tracking system of financial misconduct cases. This forms an integral part of an effective risk management strategy and should feed into the fraud prevention and risk assessment processes of departments.

6.4 Recovery of debt

Departments must ensure that debts are recovered in accordance with the relevant legislation governing the recovery of monies owing to the State. Monies owing to the State that are not recovered timeously will impact on the department's budget and eventually have a negative impact on service delivery.

6.5 Improved reporting on the recovery of debt

The inputs received from departments in relation to the recovery of losses relating to financial misconduct were found to be inadequate. Furthermore, observations made during the data verification visits in relation to the recovery of debt indicated similar challenges. The PSC recommends that departments must follow-up on payments made by employees during the recovery of losses resulting from financial misconduct. Furthermore, departments should ensure that monies collected in respect of financial misconduct are reported in the relevant financial year to the PSC.

6.6 Establishing departmental databases on financial misconduct

Good recordkeeping is a necessary element of good governance. It supports efficiency and accountability through the creation, management and retention of meaningful, accurate, reliable, accessible and durable records of important government activities and decisions. In order to ensure data integrity, departments should maintain a database of misconduct cases in an Excel format. The information required to complete the format provided by the PSC to report finalised financial misconduct cases, should form the basis for such a database.

6.7 Define when a case is finalised

Departments should consider a misconduct case as finalised once the internal departmental disciplinary process has been completed and the sanction is imposed. However, employees may appeal the sanction imposed, and in such instances the case will only be regarded as finalised once the outcome of the appeal is pronounced.

As there are clear challenges encountered by departments in reporting financial misconduct, departments are encouraged to approach the PSC for assistance when they experience difficulties in the reporting of financial misconduct. The PSC is willing to provide the necessary support to assist departments in building internal capacity to deal with financial misconduct and the reporting thereof.

CONCLUSION

The Public Service is accountable to its citizenry on the use of public funds. When large amounts of public funds are squandered by untrustworthy public servants, it impacts on the image of the Public Service and the trust relationship between government and the citizens.

The analysis contained in this report provides comprehensive detail on the level of financial misconduct during the 2007/2008 financial year and should provide valuable information for oversight purposes as well as to address trends emerging.

Chapter One

Introduction

1.1 BACKGROUND

Limited state resources coupled with service delivery backlogs from past inequities places a stringent requirement on departments to ensure that public funds are managed in an efficient, effective and economic manner. Given such context, it is therefore not surprising that financial management in the Public Service is placed under intense scrutiny and a sharp focus is placed on financial misconduct.

As custodian of good governance, the Public Service Commission (PSC) prides itself on its promotion and monitoring of the efficient, economic and effective use of resources. Through its state of the Public Service reports the PSC on an annual basis offers a high level analytical overview of this principle. In addition to this, since the 2001/2002 financial year the PSC has published annual oversight reports relating to financial misconduct. This report has become a recognised research tool with stakeholders, and is an important indicator on the efficient, economic and effective use of financial resources in the Public Service, as well as the ethical behavior of public servants. The following reports have been published by the PSC:

NAME OF REPORT	YEAR PUBLISHED
Report on Financial Misconduct for the 2001/2002 financial year	2003
Report on Financial Misconduct for the 2002/2003 and 2003/2004 financial year [∞]	2005
Overview on Financial Misconduct for the 2004/2005 financial year [*]	2006
Report on Financial Misconduct for the 2005/2006 financial year [∞]	2007
Overview on Financial Misconduct for the 2006/2007 financial year [*]	2008
Note: [*] Overview on financial misconduct denotes a statistical overview and brief analysis. [∞] Report on Financial Misconduct denotes a comprehensive report containing a statistical overview, comprehensive analysis and recommendations.	

Having monitored the trends for over 3 years, the PSC decided to alter its approach on the release of such reports. In 2006 the PSC decided to issue a comprehensive report on financial misconduct on a biennial basis. In the years between, the PSC will continue to publish an overview that provides statistical overview and a brief analysis. The overview does not provide the same level of analysis as contained in the comprehensive reports. Alternating a comprehensive report with an overview allows the PSC to utilise its resources more efficiently.

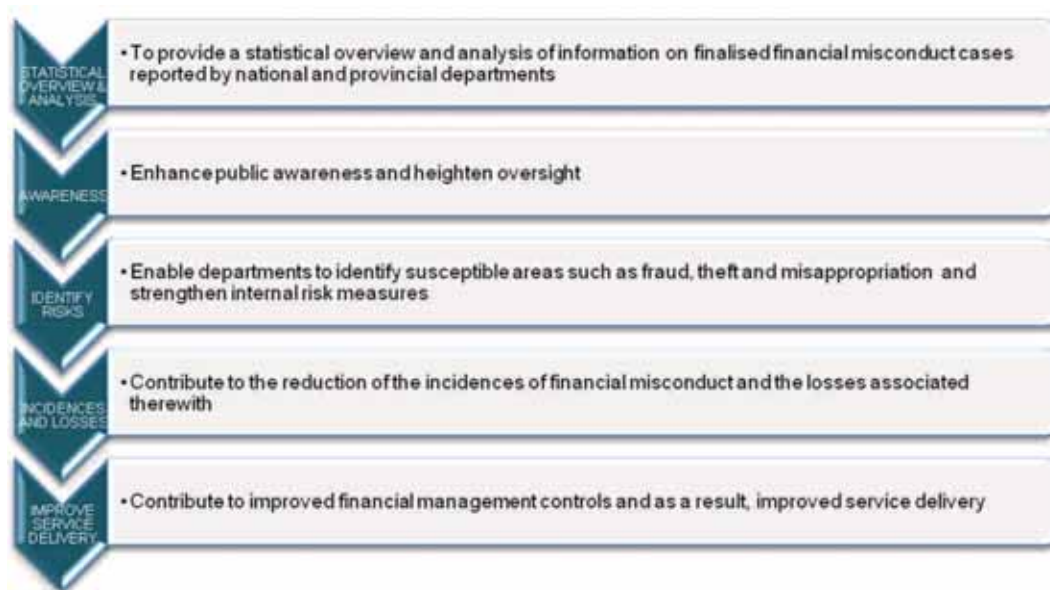
Apart from the emerging trends on the number of misconduct cases, the types and the levels involved, the PSC has expressed concerns regarding the inaccuracy of information provided by departments and more recently concerns regarding the rate of the recovery of debt emerged as a challenge. Such findings and trends have reinforced the need for greater engagement to deepen the culture of compliance, improve reporting on all aspects, and strengthen internal controls and risk management within the Public Service. To this end, in February 2008 the PSC hosted a Round-Table on the Overview on Financial Misconduct and the Indebtedness of Public Servants. This will become an ongoing feature of the PSC's promotional work in this area, and the PSC will continue to contribute to the discourse on sound financial management. In this regard, the PSC is the 'eyes and ears' of the public to ensure enhanced management and accountability and prudent utilisation of state resources.

This report covers the 2007/2008 financial year and provides a comprehensive analysis of financial misconduct cases reported to the PSC by national and provincial departments. The report also makes reference to information emanating from previous financial years in order to draw comparisons, enhance the statistical overview and establish trends.



1.2 PURPOSE OF THE REPORT

The purpose of the Report on Financial Misconduct for the 2007/2008 financial year is as follows:



As appears from the above illustration, the rigorous monitoring and reporting will assist departments to identify the trends, and thus to identify the areas susceptible to risk. Departments can then strengthen internal risk measures that will contribute to the reduction of incidences of financial misconduct and the losses associated therewith. Ultimately, appropriate risk measures should have a positive impact on financial management, as the incidences and cost associated with financial misconduct are contained.

1.3 MANDATE OF THE PUBLIC SERVICE COMMISSION

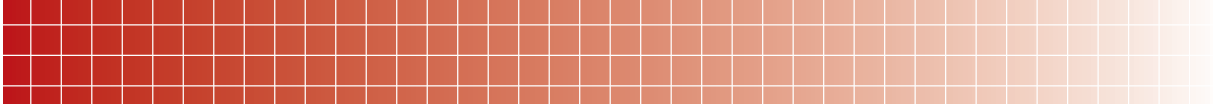
The PSC's mandate to report on financial misconduct is contained in the *Constitution of the Republic of South Africa, 1996*, as well as the *Public Service Commission Act, 1997*, and provides as follows:

LEGISLATION	DESCRIPTION
<i>Constitution of the Republic of South Africa, 1996²</i>	<p><i>Section 196(2):</i></p> <p>The PSC must exercise its powers and functions in the interest of the maintenance of effective and efficient administration and a high standard of professional ethics in the Public Service.</p> <p><i>Section 196(4):</i> the PSC is empowered -</p> <p>“(a); ” (b) <i>to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service;</i> (c); ” (d) <i>to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195;</i> (e); ” (f) <i>either of its own accord or on receipt of any complaint -</i> (i) <i>to investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executive authority and legislature;</i> (ii) (iii) <i>to monitor and investigate adherence to applicable procedures in the public service; and</i> (iv) <i>advise national and provincial organs of state regarding personnel practices in the public service, including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service”.</i></p>
<i>Public Service Commission Act, 1997³</i>	<p><i>Section 9:</i></p> <p>The PSC is empowered to inspect departments and other organisational components in the Public Service, and to have access to such official documents or obtain such information from the Heads of Department or organisational components as may be necessary for the performance of the functions of the PSC under the Constitution.</p> <p><i>Section 10:</i></p> <p>The PSC is empowered to conduct an inquiry into any matter in respect of which it is authorised by the <i>Constitution</i> or the <i>Public Service Act, 1994</i>⁴.</p> <p><i>Section 13(1):</i></p> <p>The delegation of the PSC's power to conduct an investigation to (an) officer(s).</p>

² Republic of South Africa. *The Constitution of the Republic of South Africa, Act 108 of 1996.*

³ Republic of South Africa. *Public Service Commission Act 46 of 1997.*

⁴ Republic of South Africa. *Public Service Act 103 of 1994 (as amended).*



Thus, the PSC monitors financial misconduct within the Public Service in line with the relevant legislative framework, in fulfillment of its mandate to investigate and evaluate the application of personnel and public administration practices as well as adherence to applicable procedures within the Public Service.

1.4 OUTLINE OF THE REPORT

The report is structured as follows:

- Chapter 1 provides a background to the report, as well as the PSC's mandate to report on financial misconduct.
- Chapter 2 provides the methodology adopted and limitations experienced during the study.
- Chapter 3 provides a statistical overview of financial misconduct cases reported by provincial and national departments for the 2007/2008 financial year.
- Chapter 4 provides a trend analysis of cases reported by national and provincial departments for the 2007/2008 financial year, as well as information contained in the PSC's reports on financial misconduct for previous financial years.
- Chapter 5 provides information regarding data verification conducted by the PSC at selected departments.
- The final chapter provides recommendations to Departments and relevant stakeholders, and also concluding remarks.

Chapter Two

Methodology

2.1 INTRODUCTION

The PSC monitors financial misconduct within the Public Service in line with the relevant legislative framework. In compiling reports on financial misconduct, the PSC continually seeks creative methods to refine its processes and methodology, and this chapter reflects on the processes and methodology adopted during the compilation of the current report. In this regard, whilst the standardised reporting requirements were kept in place, the PSC introduced data verification visits as part of the methodology during the current reporting cycle. The methodology adopted is discussed below:

2.2 REGULATORY FRAMEWORK RELATING TO FINANCIAL MISCONDUCT

The management of the financial resources of the state occurs within a number of statutes and regulations. Thus, in discharging their respective mandates, departments must ensure adherence to the prevailing prescripts. The regulatory framework relating to financial misconduct is contained in the following statutes and regulations:

SOURCE	PROVISION
Section 81 of the PFMA ⁵ determines that-	<p>“(1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer willfully or negligently-</p> <p>(a) fails to comply with a requirement of section 38, 39, 40, 41 or 42; or</p> <p>(b) makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.</p> <p>(2) An official of a department, a trading entity or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty.”</p>
Section 85 of the PFMA, determines that -	<p>“(1) The Minister must make regulations prescribing -</p> <p>(a) the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General, including-</p> <p>(i) particulars of the alleged financial misconduct; and</p> <p>(ii) the steps taken in connection with such financial misconduct;</p> <p>(b);</p> <p>(c);</p> <p>(d);</p> <p>(e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General; and...”</p>

⁵ Republic of South Africa. The Public Finance Management Act 1 of 1999.

SOURCE	PROVISION
Treasury Regulation 4.3, read with section 85(1)(a) and (e) of the PFMA, determines that-	<p><i>"4.3.1 The accounting officer must, as soon as the disciplinary proceedings are completed, report to the executive authority, the Department of Public Service and Administration and the Public Service Commission on the outcome, including-</i></p> <ul style="list-style-type: none"> <i>(a) the name and rank of the official against whom the proceedings were instituted;</i> <i>(b) the charges, indicating the financial misconduct the official is alleged to have committed;</i> <i>(c) the findings;</i> <i>(d) any sanction imposed on the official; and</i> <i>(e) any further action to be taken against the official, including criminal charges or civil proceedings.</i> <p><i>4.3.2 The institution must inform the executive authority, the relevant treasury, the Department of Public Service and Administration and the Public Service Commission of the outcome of any criminal and civil proceedings instituted against any person for financial misconduct in terms of section 86 of the Act."</i></p>

2.3 DEFINITION OF FINANCIAL MISCONDUCT

Emanating from section 81(1)(b) of the PFMA⁶, financial misconduct entails any conduct by an accounting officer or an official of a department that results in material losses through criminal conduct, unauthorised, irregular, fruitless and wasteful expenditure. Thus, acts of corruption, fraud, theft, misappropriation and abuse, which have a financial impact can constitute financial misconduct. The types of financial misconduct are comprehensively discussed in Chapter 3, paragraph 3.3 of this Report.

2.4 REPORTING FORMAT AND ESTABLISHMENT OF A DATABASE

A reporting format was developed in line with the provisions of Treasury Regulations 4.3⁷, read with section 85(1)(a) and (e) of the PFMA⁸ (**Annexure A**). It was developed in order to assist departments to submit comprehensive details of cases of financial misconduct. Furthermore, departments were requested to submit comprehensive details of cases involving Members of the Senior Management Service (SMS) to the PSC, including information on the specific charges brought against each employee. In the instances where no criminal proceedings were instituted, the reason for such a decision was requested. This will allow a much more close monitoring of trends in the management echelon.

The reporting format was placed on the PSC's Website (**www.psc.gov.za**) in the 2006/2007 financial year in order to provide departments with easy access and improve data integrity.

A database of cases has been established and maintained during the past five financial years. This database has been adapted in terms of the additional information requested to capture information on finalised financial misconduct cases per department for the 2007/2008 financial year:

⁶ Republic of South Africa. The Public Finance Management, Act 1 of 1999.

⁷ Republic of South Africa. Treasury Regulations, 2002 published in Government Gazette No. 23463 dated 25 May 2002.

⁸ Republic of South Africa. The Public Finance Management, Act 1 of 1999.

2.5 COLLATION OF INPUTS FROM DEPARTMENTS

In order to present a comprehensive report on financial misconduct, it is imperative that national and provincial departments submit a report on finalised financial misconduct cases to the PSC for every financial year. Even if no financial misconduct cases were finalised a **nil return** must be submitted.

A circular was disseminated to all national and provincial departments requesting reports for the 2007/2008 financial year. In order to ensure that the circular reached the relevant stakeholders it was also transmitted per fax and e-mailed to contact persons of individuals that attended the Round-Table on Financial Misconduct and Indebtedness of Public Servants which was held by the PSC in February 2008. Furthermore, telephonic follow-ups were made with the departments to confirm receipt of the circular. A format for reporting financial misconduct has been made available to departments since the 2002/2003 financial year and has subsequently been made available on the PSC's Website.

On the expiry of the due date for inputs, further follow-ups were made telephonically. As a result of poor responses by national and provincial departments, reminders were sent to those departments that failed to provide the PSC with a response. Departments were requested to provide inputs by no later than 18 July 2008. Further telephonic follow-ups were subsequently made to departments, requesting them to provide inputs.

2.6 RESPONSES FROM NATIONAL AND PROVINCIAL DEPARTMENTS

Tables 1 and 2 below reflect those national and provincial departments that have reported finalised financial misconduct cases and those departments that submitted a nil report. As indicated above, if no financial misconduct cases were finalised by a particular department, a nil return should be submitted to the PSC for record purposes.

2.6.1 National Departments

Once again all national departments submitted a report for the 2007/2008 financial year. Of the 35 national departments, 13 departments indicated that they had no financial misconduct cases for the financial year.

Table 1: Reports received from National Departments

DEPARTMENT	CASES REPORTED	NO CASES REPORTED
Agriculture	X	
Arts and Culture		X
Communications	X	
Correctional Services	X	
Defence	X	
Education	X	
Environmental Affairs and Tourism		X
Foreign Affairs	X	
Government Communication and Information System	X	
Health		X
Home Affairs	X	
Housing	X	
Independent Complaints Directorate		X
Justice and Constitutional Development (DOJCD)	X	
Labour	X	
Land Affairs	X	

DEPARTMENT	CASES REPORTED	NO CASES REPORTED
Minerals and Energy	X	
National Prosecuting Authority		X
National Treasury		X
Presidency		X
Provincial and Local Government		X
Public Enterprises		X
Public Service and Administration	X	
Public Works		X
Office of the Public Service Commission (OPSC)	X	
Science and Technology	X	
Secretariat for Safety and Security		X
Social Development	X	
South African Management Development Institute (SAMDI)		X
South African Police Service	X	
Sport and Recreation South Africa	X	
Statistics South Africa	X	
Trade and Industry (Dti)	X	
Transport		X
Water Affairs and Forestry (DWAF)	X	

2.6.2 Provincial Administrations

The responses of Provincial Administrations are reflected in **Table 2** below. Of the 108 provincial departments 107 departments have provided inputs to the PSC. A total of 54 departments indicated that they had no financial misconduct cases for the financial year and one (1) department, namely the Royal Household in KwaZulu-Natal Province did not provide an input to the PSC.

Table 2: Reports received from Provincial Administrations

PROVINCE	DEPARTMENT	CASES REPORTED	NO CASES REPORTED	NO RESPONSE
Eastern Cape	Agriculture		X	
	Economic Development and Environmental Affairs	X		
	Education	X		
	Health	X		
	Housing, Local Government and Traditional Affairs		X	
	Office of the Premier		X	
	Provincial Treasury	X		
	Public Works	X		
	Roads and Transport	X		
	Safety and Liaison	X		
	Social Development		X	

PROVINCE	DEPARTMENT	CASES REPORTED	NO CASES REPORTED	NO RESPONSE
	Sport, Recreation, Arts and Culture	X		
Free State	Agriculture		X	
	Education	X		
	Health	X		
	Local Government and Housing		X	
	Office of the Premier		X	
	Provincial Treasury		X	
	Public Safety, Security and Liaison		X	
	Public Works, Roads and Transport	X		
	Social Development		X	
	Sport, Arts and Culture	X		
	Tourism, Environmental and Economic Affairs	X		
Gauteng	Agriculture, Conservation, Environment	X		
	Community Safety		X	
	Education	X		
	Finance and Economic Development		X	
	Gauteng Shared Service Centre		X	
	Health	X		
	Housing		X	
	Local Government		X	
	Office of the Premier		X	
	Public Transport, Roads and Works		X	
	Social Development	X		
	Sports, Arts, Culture and Recreation	X		
	Treasury		X	
KwaZulu-Natal	Agriculture and Environmental Affairs		X	
	Arts, Culture and Tourism		X	
	Community Safety and Liaison		X	
	Economic Development	X		

PROVINCE	DEPARTMENT	CASES REPORTED	NO CASES REPORTED	NO RESPONSE
	Education	×		
	Health Services	×		
	Housing		×	
	Local Government and Traditional Affairs	×		
	Office of the Premier		×	
	Provincial Treasury		×	
	Public Works		×	
	Social Services and Population Development		×	
	Sports and Recreation		×	
	Transport		×	
	Royal Household			×
Limpopo	Agriculture		×	
	Economic Development, Environment and Tourism	×		
	Education	×		
	Health and Social Development	×		
	Local Government and Housing	×		
	Office of the Premier		×	
	Public Works		×	
	Roads and Transport	×		
	Safety, Security and Liaison		×	
	Sport, Arts and Culture		×	
	Treasury		×	
Mpumalanga	Agriculture and Land Administration		×	
	Culture, Sport and Recreation	×		
	Economic Development and Planning		×	
	Education	×		
	Finance	×		
	Health and Social Services	×		
	Local Government and Housing	×		
	Office of the Premier		×	

PROVINCE	DEPARTMENT	CASES REPORTED	NO CASES REPORTED	NO RESPONSE
	Public Works		X	
	Roads and Transport	X		
	Safety and Security		X	
North West	Agriculture, Conservation, Environment and Tourism	X		
	Developmental Local Government and Housing		X	
	Economic Development and Tourism	X		
	Education	X		
	Finance		X	
	Health	X		
	Office of the Premier		X	
	Public Works	X		
	Social Development	X		
	Sport, Arts and Culture	X		
	Transport, Roads and Community Safety		X	
Northern Cape	Agriculture and Land Reform		X	
	Economic Affairs	X		
	Education	X		
	Health	X		
	Housing and Local Government	X		
	Office of the Premier		X	
	Provincial Treasury	X		
	Safety and Liaison		X	
	Social Services and Population Development	X		
	Sport, Arts and Culture		X	
	Tourism, Environment and Conservation		X	
	Transport, Roads and Public Works		X	
Western Cape	Agriculture		X	
	Community Safety	X		
	Cultural Affairs and Sport	X		
	Economic Development and Tourism		X	

PROVINCE	DEPARTMENT	CASES REPORTED	NO CASES REPORTED	NO RESPONSE
	Education	X		
	Environmental Affairs and Development Planning		X	
	Health	X		
	Local Government and Housing	X		
	Office of the Premier		X	
	Provincial Treasury		X	
	Social Development	X		
	Transport and Public Works	X		

2.7 LIMITATIONS EXPERIENCED

Despite having provided the departments with a copy of the reporting format, which is also made available on the PSC's Website, some departments still failed to utilise the format and/or did not complete all fields provided for in the format. It is crucial that information such as the cost of financial misconduct be accurately reflected by departments, as inaccurate information impacts on the figures relating to the actual cost of financial misconduct. The quality of the reporting indicated that some departments merely complete the format to ensure compliance, notwithstanding the impact this has on data integrity and ultimately, the analysis contained in the report.

Some departments reported on cases that were finalised in previous financial years as well as cases that were not finalised in the 2007/2008 financial year (i.e the disciplinary proceedings were not finalised and or the employee has lodged an appeal against the sanctions imposed and the outcome thereof has not been finalised). The failure of departments to comply with the reporting requirements set out in the Treasury Regulations impacts on the total number of cases being reported.

The culture of timeous compliance is not embedded. In order to facilitate reporting, a circular was sent to departments requesting them to submit their reports by a specific date. However, many departments failed to submit their reports by the said date. As a result the PSC had to forward reminders and in some instances make numerous telephonic follow-ups resulting in a delay in finalising the report. Furthermore, one (1) department, namely the Royal Household in KwaZulu-Natal Province failed to provide an input to the PSC.

Letters were forwarded to the heads of department (HoDs) of identified departments informing them of the Data Verification visits. Furthermore, the HoDs were requested to provide the PSC with contact details of a delegated official with whom officials of the OPSC could liaise with. There were delays in feedback from departments. Furthermore, it was difficult to secure appointments with the delegated officials due to their busy schedules.

Prior to the PSC's Data Verification visits, departments were requested to prepare certain documentation to be perused during the visit. However, it was found that some departments did not have databases available and misconduct files were not available for perusal as they were maintained at the Regional/District Offices.

Chapter Three

Statistical Overview of the 2007/2008 Financial Year

3.1 INTRODUCTION

This Chapter presents a statistical overview of the information reported by the national and provincial departments for the 2007/2008 financial year. An overview in respect of the following aspects of financial misconduct will be discussed:

- The number of employees charged with financial misconduct
- Types of financial misconduct reported
- Levels and gender of employees charged with misconduct
- Outcome and sanctions imposed in cases of financial misconduct
- The cost of financial misconduct
- Whether or not criminal action had been taken against employees charged with financial misconduct

3.2 THE NUMBER OF EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

A total of **868** cases of financial misconduct were reported for the 2007/2008 financial year; of which **316** (36%) cases were reported by national departments and **552** (64%) cases were reported by provincial departments. During the previous financial year (2006/2007), a total of 1042 cases were reported by national (370) and provincial (672) departments. **Figure 1** below reflects the finalised financial misconduct cases reported by national departments and by provincial departments.

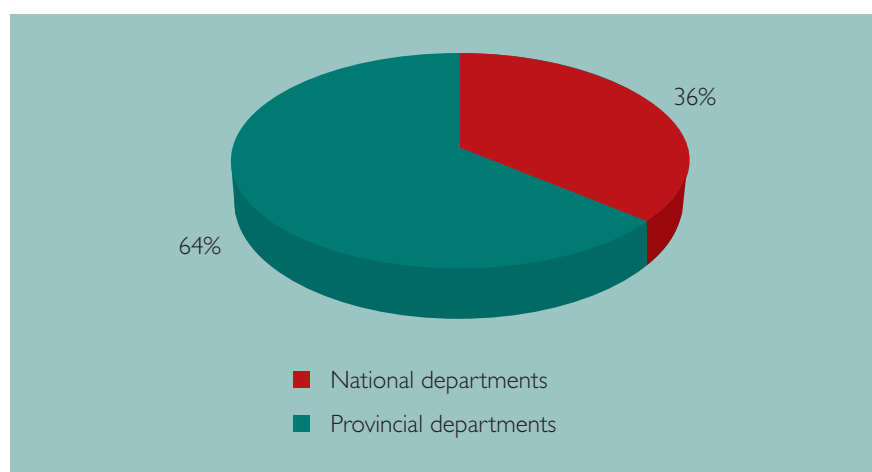


Figure 1: Number of cases at national level and provincial level

Figure 2 below provides a comparison of the total number of cases reported at national and provincial level over the past five years. It shows that the number of cases reported by provinces have consistently been higher than that of national departments.

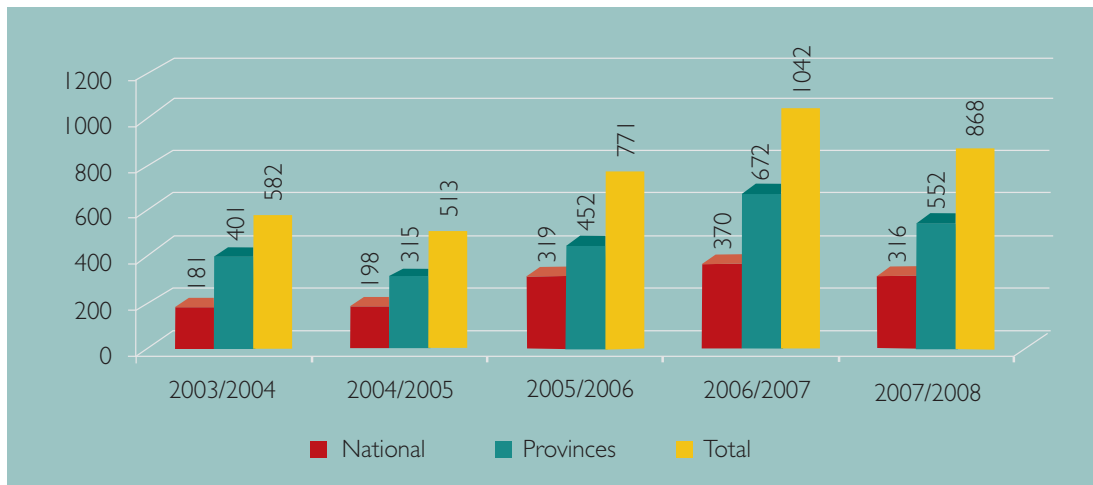


Figure 2: Number of cases at national and provincial level over the past five financial years

A breakdown of the **868** financial misconduct cases is provided below.

3.2.1 National departments

Figure 3 provides an overview of the **316** cases reported by national departments for the 2007/2008 financial year. Those departments that indicated that they finalised no financial misconduct cases in the relevant financial year are not included in the figure. The figure shows that the Department of Justice and Constitutional Development (DOJCD) reported 113 cases, which represents the highest number of cases for the 2007/2008 financial year. This trend is consistent with the findings made in the 2005/2006 and 2006/2007 reports where the DOJCD also reported the highest number of cases.

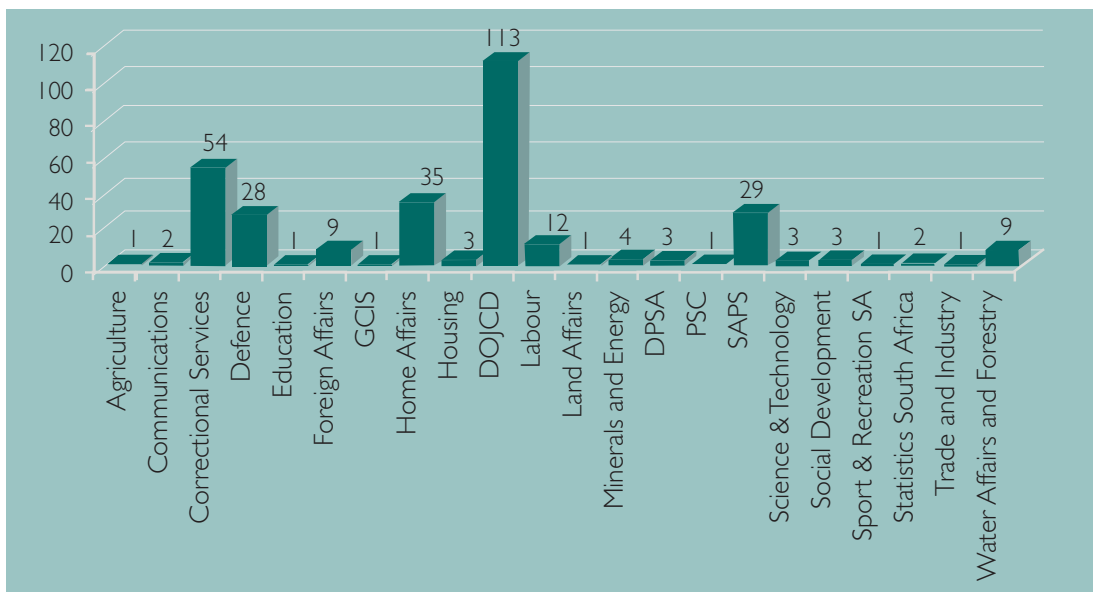


Figure 3: Number of cases at national level

In the 2007/2008 financial year, the Department of Correctional Services reported the second highest number of cases (54) in comparison to the 19 of the 2006/2007 financial year. The reporting of a high number of cases is not necessarily a bad thing, as this may be indicative of tighter controls and a better developed risk management approach. In the previous financial year (2006/2007), the Department of Defence reported the second highest number of cases (74), and they have reported substantially less cases (28) in the 2007/2008 financial year.

3.2.2 Provincial Administrations

3.2.2.1 Overview of cases reported by Provincial Administrations

Figure 4 below provides an overview of the **552** cases reported by provincial departments for the 2007/2008 financial year:

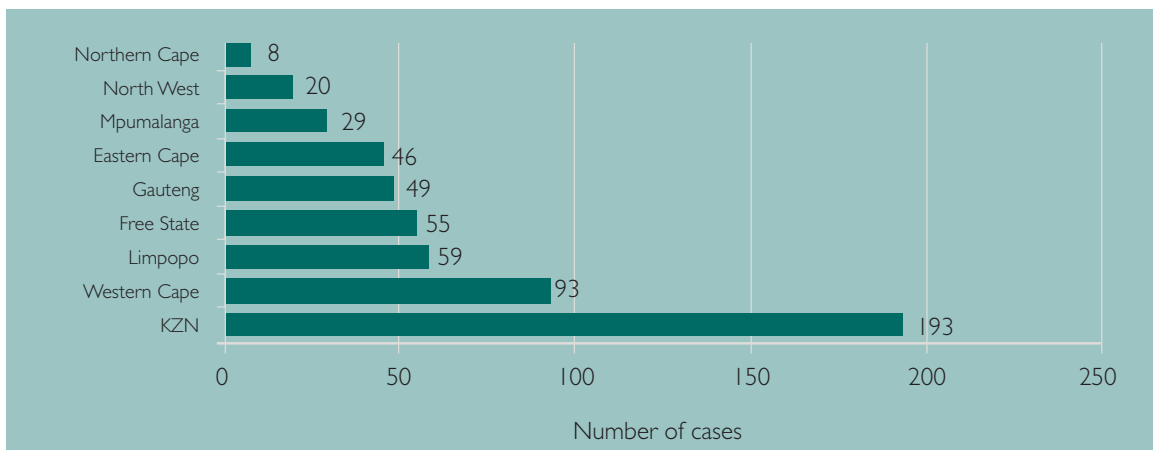


Figure 4: Number of cases reported at provincial level

The KwaZulu-Natal Province reported the highest number of cases (193), representing 35% of the total number of cases reported by provinces. This was followed by Western Cape Province with 93 (17%) of the total number of cases reported by the provincial departments. North West and Northern Cape provinces reported the least number of cases namely 20 (4%) and 8 (1%), respectively.

3.2.2.2 Eastern Cape

The Eastern Cape Province reported 46 (8%) cases, of the total number of cases reported by the Provinces. The Departments of Agriculture, Housing, Office of the Premier, Social Development and Local Government and Traditional Affairs, provided a “nil input” indicating that they had no finalised cases of financial misconduct, and have thus not been included in the figure. **Figure 5** below provides an illustration of the 8 departments that reported finalised cases.



Figure 5: Number of cases reported by the Eastern Cape Province

The Department of Education reported 32 (70%) of the total number of cases reported by the Eastern Cape Province. This represents the highest number of financial misconduct cases. Of the 32 cases reported, 10 (31%) of the cases related to the falsification of records and inflated learner records.

3.2.2.3 Free State

The Free State Province reported 55 (10%) of the total number of cases reported by the Provinces. **Figure 6** below provides an overview of the 5 departments that reported finalised cases.

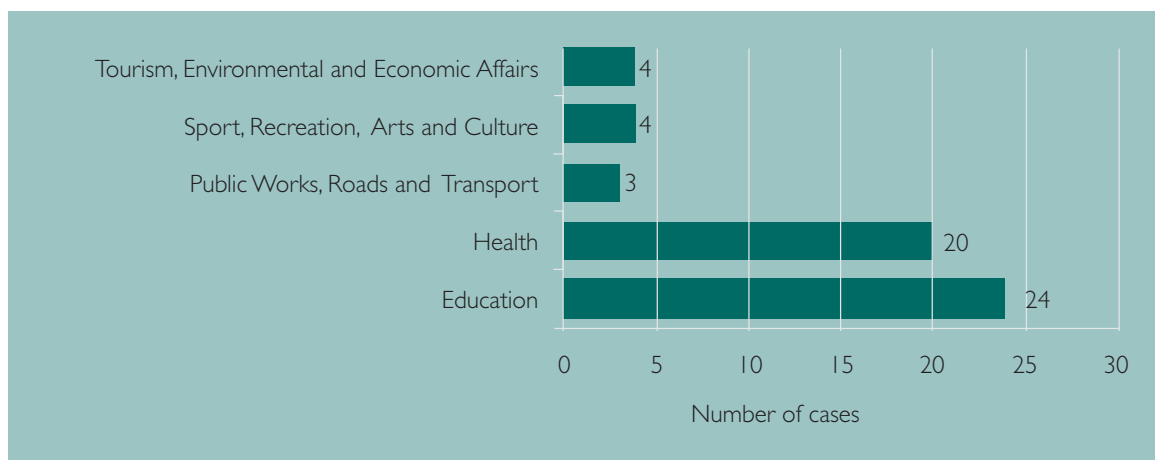


Figure 6: Number of cases reported by the Free State Province

Figure 6 shows that the cases reported by the Departments of Education (24) and Health (20) collectively comprised 44 (80%) of the cases reported by the Province. Six departments provided a nil input, which means that these departments did not finalise any financial misconduct cases in the relevant financial year. These include the departments of Agriculture, Local Government and Housing, Office of the Premier, Provincial Treasury, Social Development and Public Safety, Security and Liaison. According to a PSC assessment of professional ethics in the Free State Province⁹ only two departments, namely Agriculture and Public Works, have formal investigative procedures in place and this could impact on the finalisation of financial misconduct cases.

3.2.2.4 Gauteng

The Gauteng Province reported 49 cases. **Figure 7** below provides an overview of the 5 departments that reported finalised cases.

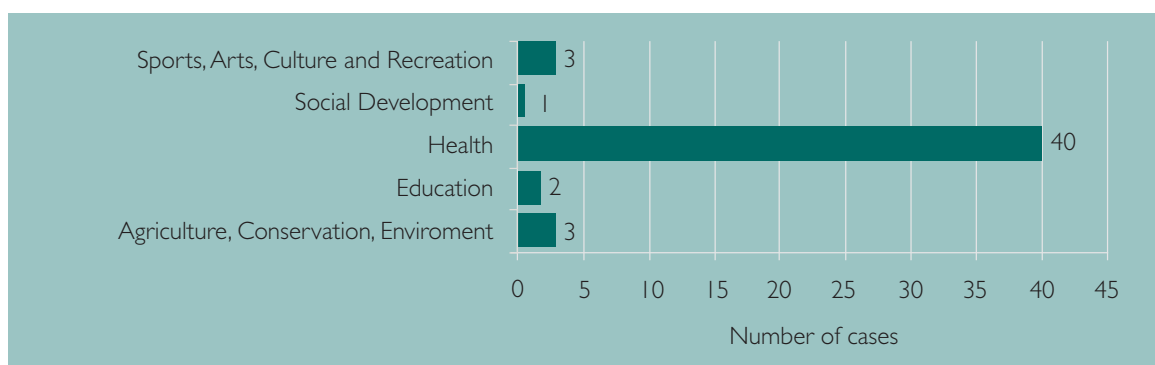


Figure 7: Number of cases reported by the Gauteng Province

⁹ An Assessment of Professional Ethics in the Free State. Public Service Commission. March 2007.

The Department of Health in Gauteng Province reported the highest number of cases 40 (82%) of the total number of cases reported by the Province. The high number of cases in this Department is concerning and suggests serious weaknesses in their risk management. Eight departments in Gauteng Province reported that they had no finalised financial misconduct cases for the 2007/2008 financial year. These are Community Safety, Finance and Economic Development, Gauteng Shared Services Centre, Housing, Local Government, Office of the Premier, Public Transport, Roads and Works, and Treasury.

3.2.2.5 KwaZulu-Natal

As indicated above, KwaZulu-Natal Province reported the highest number of cases (193 or 35%) of the total number of cases reported by provinces. **Figure 8** below provides an overview of the 4 departments that reported finalised cases.

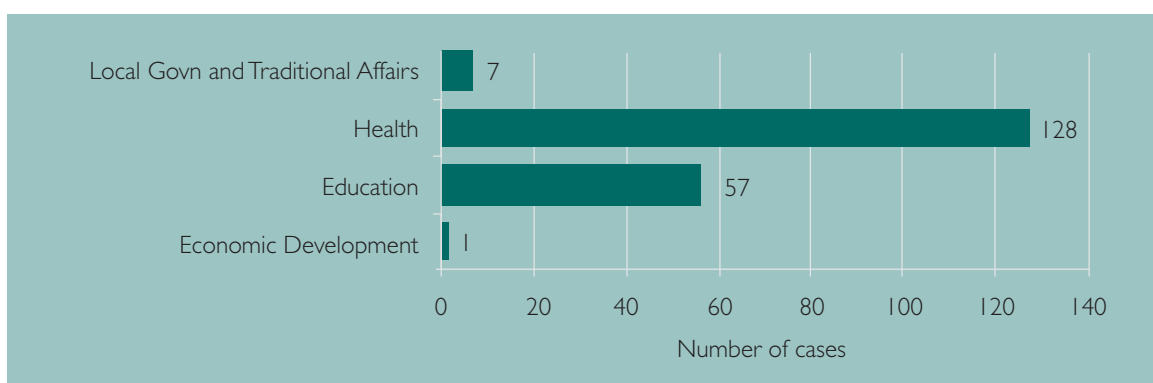


Figure 8: Number of cases reported by KwaZulu-Natal Province

Ten departments in KwaZulu-Natal Province indicated that they finalised no financial misconduct cases in the 2007/2008 financial year. Therefore, apart from the fact that the KwaZulu-Natal Province reported the highest number of cases, these cases are restricted to only 4 departments. The following departments indicated that they have no financial misconduct cases:

Agriculture
Arts, Culture & Tourism
Community Safety and Liaison
Housing
Office of the Premier
Provincial Treasury
Sport and Recreation
Transport
Welfare and Population Development
Works

The high number of cases reported by the KwaZulu-Natal Province can be ascribed to the fact that there was large number of cases involving social grant fraud in the Department of Health. The social grant fraud cases (116) account for 60% of the total number of cases reported in the Province.

It should also be noted that according to a PSC assessment of professional ethics in the KwaZulu-Natal Provincial Administration¹⁰, it was found that the departments of Arts, Culture and Tourism, Sport and Recreation, Transport, Community Safety and Liaison and the Royal Household do not have dedicated units to deal with fraud and corruption. Furthermore, only the departments of Health, Local Government and Housing have dedicated budgets to combat fraud and corruption. This could possibly be the reason for the fact that ten departments in the Province reported no finalised financial misconduct cases for the 2007/2008 financial year.

3.2.2.6 Limpopo

Limpopo Province reported 59 (11%) cases in respect of the provinces, which is the third highest number in the provinces. **Figure 9** below provides an overview of the 5 departments that reported finalised cases.

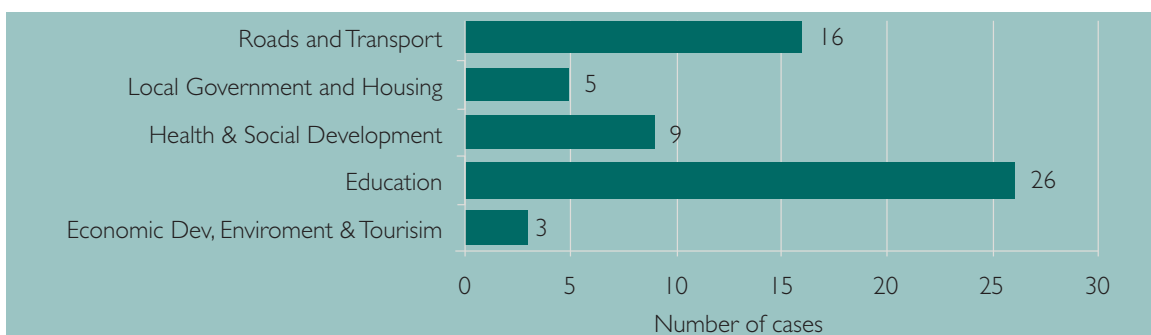


Figure 9: Number of cases reported by the Limpopo Province

Figure 9 shows that the Department of Education reported 26 (44%) cases. This represents the highest number of cases in Limpopo Province. The Department, however, provided incomplete information in respect of 17 of these cases and it was therefore not possible to determine the charges brought against the relevant employees. With regard to the Department of Roads and Transport, 8 (50%) of the 16 reported cases related to fraud.

Six departments in Limpopo Province reported that they finalised no financial misconduct cases in the 2007/2008 financial year. These are the departments of Agriculture, Office of the Premier, Provincial Treasury, Public Works, Safety, Security and Liaison and Sport, Arts and Culture.

3.2.2.7 Mpumalanga

Mpumalanga Province reported 29 (5%) cases. **Figure 10** below provides an overview of the 6 departments that reported finalised cases.

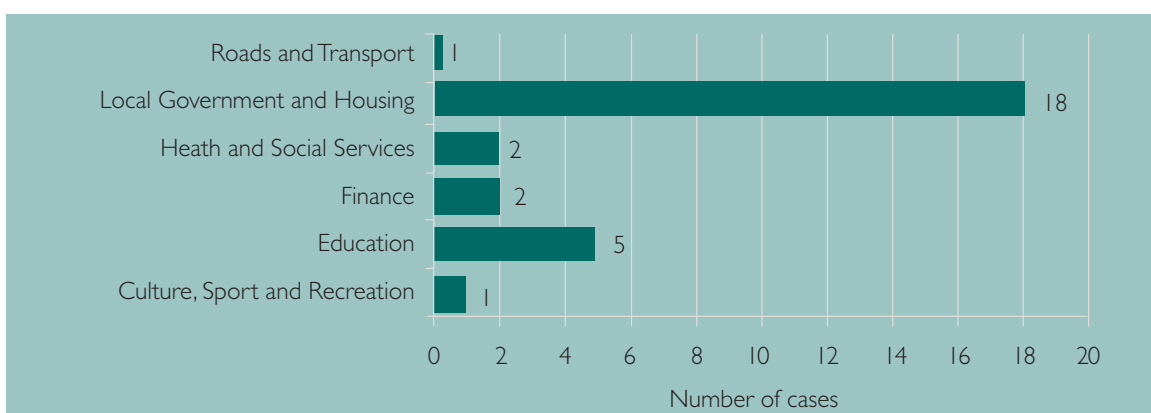


Figure 10: Number of cases reported by the Mpumalanga Province

¹⁰ An Assessment of Professional Ethics in the KwaZulu-Natal Provincial Administration. Public Service Commission, 2007.

Figure 10 reflects that 18 (62%) of the cases reported by the Mpumalanga Province emanated from the Department of Local Government and Housing and a further 5 (17%) cases emanated from the Department of Education.

Five departments in Mpumalanga Province reported that they finalised no financial misconduct cases in the 2007/2008 financial year, and have thus not been included in the figure. These are the departments of Agriculture and Land Administration, Economic Development and Planning, Office of the Premier, Public Works and Safety and Security.

3.2.2.8 North West

The North West Province reported 20 cases. **Figure II** provides an overview of the 7 departments that reported finalised cases.

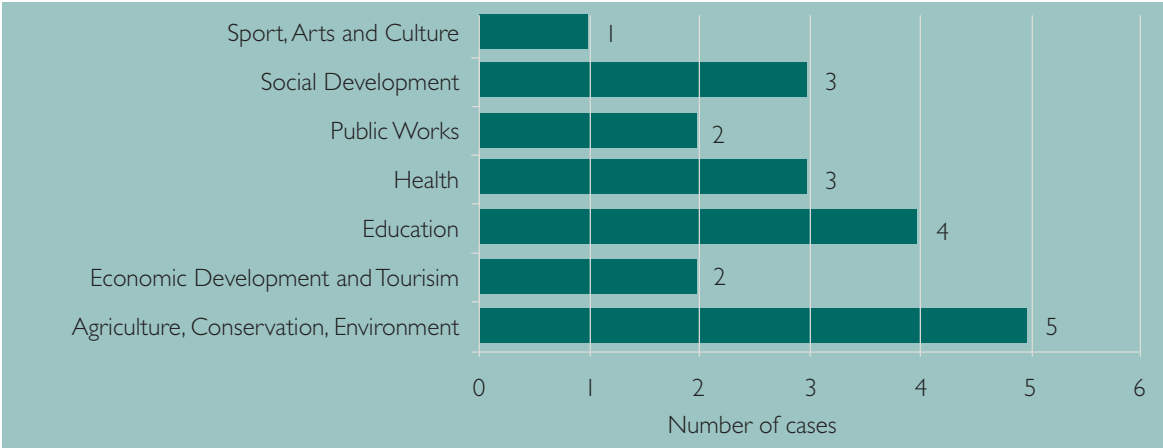


Figure II: Number of cases reported by the North West Province

Figure II illustrates that the Department of Agriculture finalised the highest number of cases 5 (25%) in the North West Province.

Five departments in the North West Province reported that they finalised no financial misconduct cases in the 2007/2008 financial year, and have thus not been included in the figure. These are the departments of Developmental Local Government and Housing, Finance, Office of the Premier and Transport, Roads and Community Safety.

3.2.2.9 Northern Cape

The Northern Cape reported 8 (4%) cases, which is the lowest number of cases reported by the provinces. **Figure 12** below provides an overview of the 6 departments that reported finalised cases.

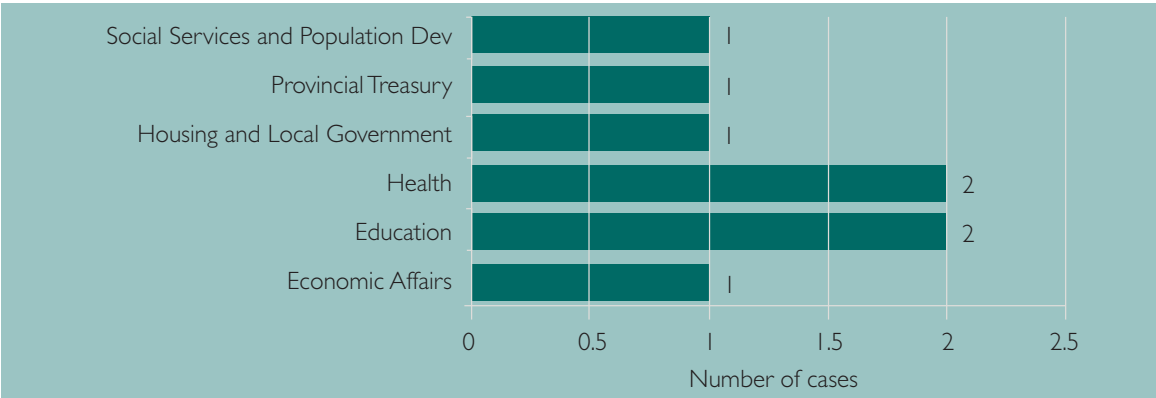


Figure 12: Number of cases reported by the Northern Cape Province

In the Northern Cape, the departments of Health and Education each reported 2 cases, comprising 50% of the total number of cases reported by the Province. The following departments reported that they finalised no financial misconduct cases in the 2007/2008 financial year:

Agriculture and Land Reform
Office of the Premier
Safety and Liaison
Sport, Arts and Culture
Tourism, Environment and Conservation
Transport, Roads and Public Works

3.2.2.10 Western Cape

The Western Cape Province reported 93 (17%) cases. **Figure 13** below provides an overview of the 7 departments that reported finalised cases.

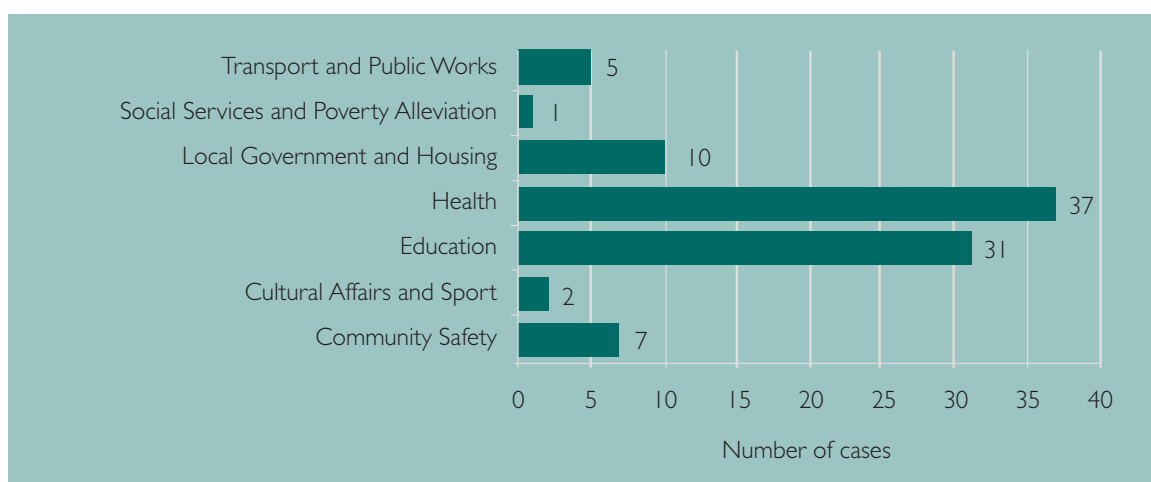


Figure 13: Number of cases reported by the Western Cape Province

Overall, 57 (61.2%) of the 93 cases emanating from the Western Cape Province related to social grant fraud. **Figure 13** shows that the majority of cases in the Western Cape Province emanated from the Departments of Health and Education, with 37 (40%) and 31 (33%) cases each. Of the 68 cases reported by these two departments, 50 (74%) of the cases related to social grant fraud.

Five departments in the Western Cape Province reported that they finalised no financial misconduct cases in the 2007/2008 financial year; and have thus not been included in the figure. These are the departments of Agriculture, Economic Development and Tourism, Environmental Affairs and Development Planning, Office of the Premier and Treasury.

The Offices of the Premier in all nine provinces reported that they finalised no financial misconduct cases during the 2007/2008 financial year. On the other hand, in three provinces the departments of Health (Gauteng, KwaZulu-Natal and Western Cape) reported the highest number of cases and in three provinces (Eastern Cape, Free State and Limpopo) the departments of Education reported the highest number of cases.

3.3 TYPES OF FINANCIAL MISCONDUCT REPORTED

In terms of the PFMA¹¹, financial misconduct entails any material losses through criminal conduct, unauthorised, irregular, fruitless and wasteful expenditure. Departments reported various types of financial misconduct committed by employees. For statistical purposes the types of financial misconduct reported by departments were categorised as reflected in **Table 3** below. The table also reflects examples of reported cases that fall into these categories.

Table 3: Types of financial misconduct reported

TYPE	DESCRIPTION	EXAMPLES OF REPORTED CASES
Corruption	Defined in the Prevention and Combating of Corrupt Activities Act, 2003.	<ul style="list-style-type: none"> • Bribery
Financial Mismanagement	Expenditure other than unauthorised expenditure, incurred in contravention of, or that is not in accordance with a requirement of any applicable legislation.	<ul style="list-style-type: none"> • Wasteful and fruitless expenditure • Failure to follow procurement procedures • Payment to service provider without receiving goods
Fraud	The unlawful and intentional making of a misrepresentation which causes actual and/or potential prejudice to another.	<ul style="list-style-type: none"> • Social grant fraud • Subsistence and Travel claim fraud • Capturing fraudulent transactions • Petty cash fraud
Theft	The unlawful taking with the intent to steal something which is prone to being stolen.	<ul style="list-style-type: none"> • Theft of laptop/petrol/ state funds/ food/petty cash • Theft of cheques
Misappropriation and abuse	The wrongful, improper or excessive use of public funds and/or assets in a person's care.	<ul style="list-style-type: none"> • Abuse of Government Garage (GG) vehicle • Damage to GG vehicle • Petrol card abuse • Abuse of telephone
Gross negligence	Any act or omission without considering the consequences thereof.	<ul style="list-style-type: none"> • Loss of State property/funds • Not authorised to approve expenditure

The figure below is an indication of the types of financial misconduct reported by the departments during the 2007/2008 financial year:

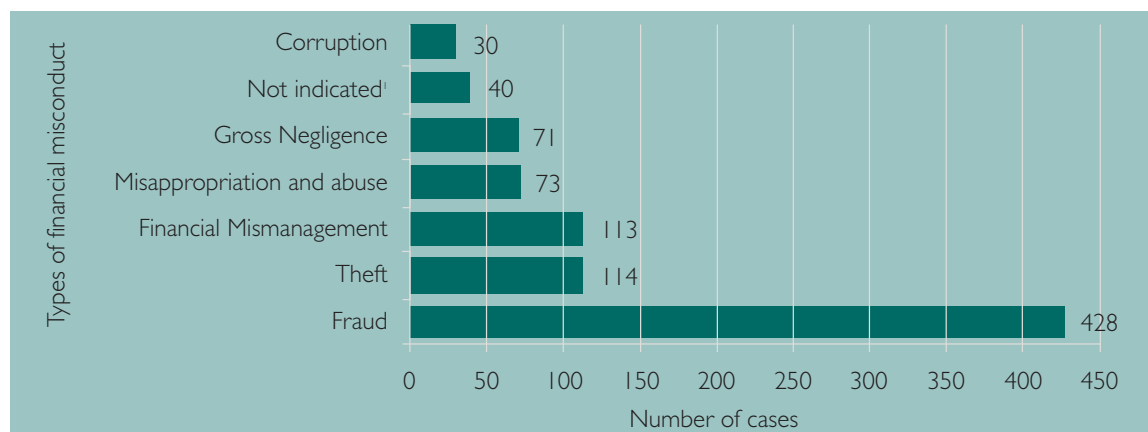


Figure 14: The types of financial misconduct reported by departments for the 2007/2008 financial year

Note: ¹ Not indicated depicts the number of instances whereby departments failed to indicate the type of offence committed.

¹¹ Republic of South Africa. The Public Finance Management Act 1 of 1999.

3.3.1 Fraud cases reported

Figure 15 reflects that cases in the category “fraud” comprise a significant portion 428 (49%) of the overall number of cases reported. This figure was even higher in the 2006/2007 financial year; where this category accounted for 615 (59%) of the reported cases. Although the number of cases has declined in the 2007/2008 financial year, the reported cases are still significantly high.

3.3.2 Theft cases reported

Figure 15 also depicts that the category “theft” comprised the second highest number of cases at 113 (13%). As with fraud, the figures relating to theft were even higher in the 2006/2007 financial year; where theft accounted for 136 (13.1%) reported cases.

Figure 15 below provides a breakdown of the fraud and theft cases at national and provincial level.

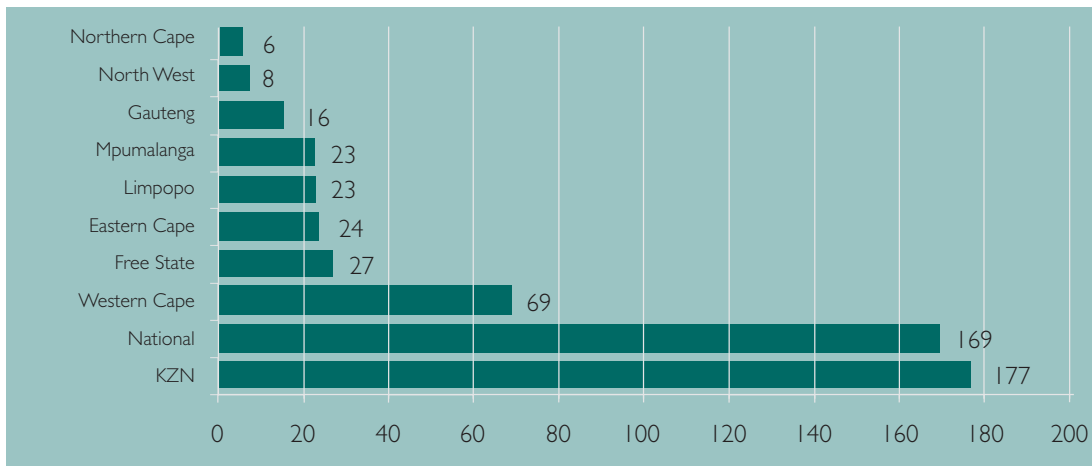
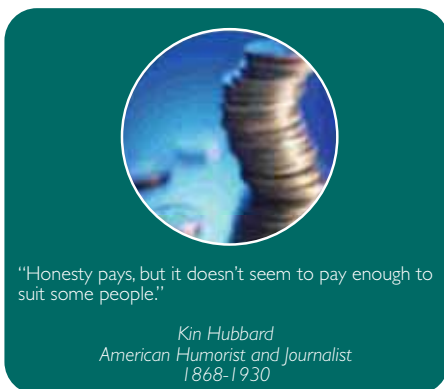


Figure 15: Breakdown of fraud and theft cases at national/provincial level

Figure 15 above shows that the KwaZulu-Natal Province followed by National Departments have reported the highest number of fraud and theft cases at 177 (33%) and 169 (31%) cases respectively. As stated above, the high number of cases reported in the KwaZulu-Natal Province, is as a result of the social grant fraud cases reported by the Department of Health. With regard to the 169 cases reported by National Departments, 60 (36%) cases emanated from the DOJCD.

3.4 LEVELS OF EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT



In terms of Treasury Regulations 4.3.1¹², departments are required to indicate the ranks of the employees that have been charged with financial misconduct. Due to the use of different rank designations by departments, departments were, with effect from the 2002/2003 financial year, requested to rather indicate the salary levels of employees. The figure below reflects the number of employees charged with financial misconduct according to salary levels for the financial year 2007/2008. Due to the fact that the salary levels of employees were not indicated in 20 (2.3%) of the finalised cases reported, it is reflected as “not indicated”. The fact that departments have not submitted this information is also a reflection of the incompleteness of the information provided.

¹² Republic of South Africa. Treasury Regulations, 2002 published in Government Gazette No 23463 dated 25 May 2002.

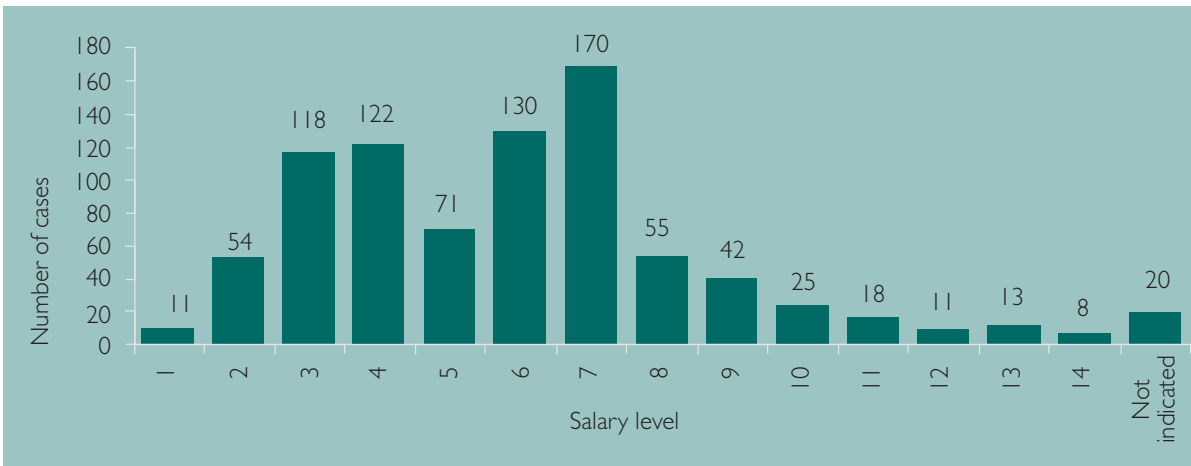


Figure 16: Salary levels of employees charged with financial misconduct

Figure 16 above indicates that financial misconduct prevails at all levels in the Public Service. Furthermore, employees on salary levels 6 and 7 have committed the highest number of financial misconduct acts. A comparison of the percentage of the total number of employees per salary category (as at 30 May 2008¹³) and the percentage of the total number of finalised financial misconduct cases reported for the 2007/2008 financial year is reflected in **Figure 17** below.

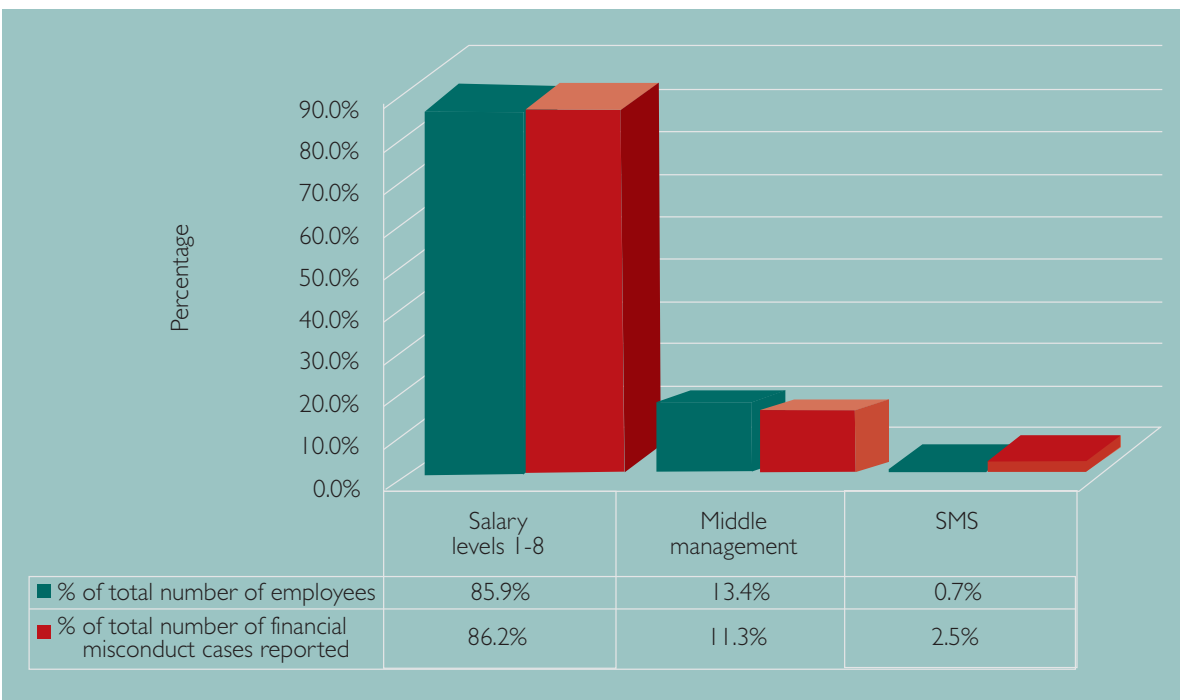


Figure 17: Comparison of the percentage of the total number of employees per salary category and the percentage of the total number of finalised financial misconduct cases reported

Figure 17 shows that the percentage of the total number of employees employed at salary levels 1 and 8 (85.9%) as at 30 May 2008, correlates closely with the percentage of finalised misconduct cases reported on this level (86.2%). In other words, although the highest number of cases was reported on salary levels 1 and 8, proportionally these levels represent the highest number of employees in the Public Service.

¹³ Information provided by the Department of Public Service and Administration.

Using the same comparison between the total number of employees at the SMS level (0.7%) and the percentage of the total number of finalised financial misconduct cases in respect of SMS members (2.5%) for the 2007/2008 financial year, the outcome suggests that employees in the SMS have a greater propensity to commit financial misconduct. This is a worrying trend given that the SMS plays a critical role in the promotion and maintenance of sound financial management, and are the primary stewards of public resources. This trend cannot be ignored and must be addressed.

3.5 GENDER OF EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

Of the **868** cases reported, departments did not indicate the gender in 7 (1%) cases. **Figure 18** below reflects that financial misconduct was committed by males in 425 (49%) of the reported cases, and by females in 436 (50%) of the reported cases.

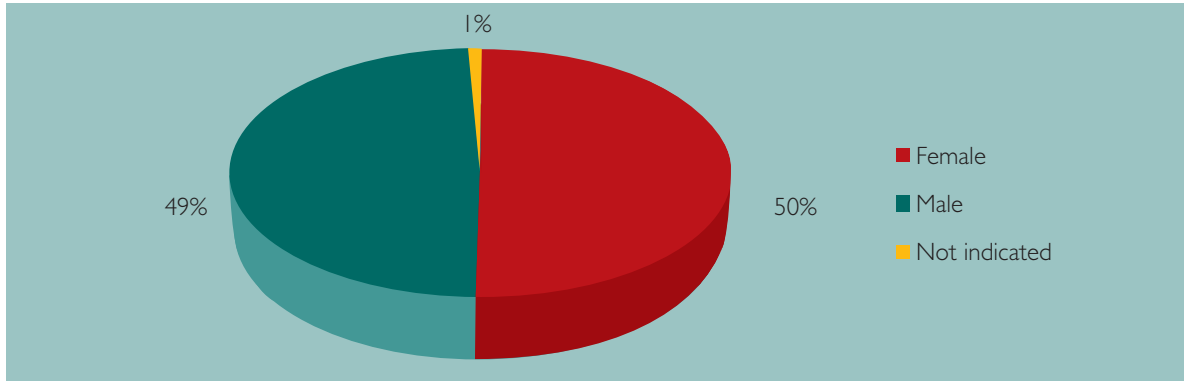


Figure 18: Gender of employees in respect of financial misconduct cases

Figure 19 below provides a comparison of the gender of the number of employees employed as at 30 May 2008¹⁴, and the gender of employees charged with financial misconduct.

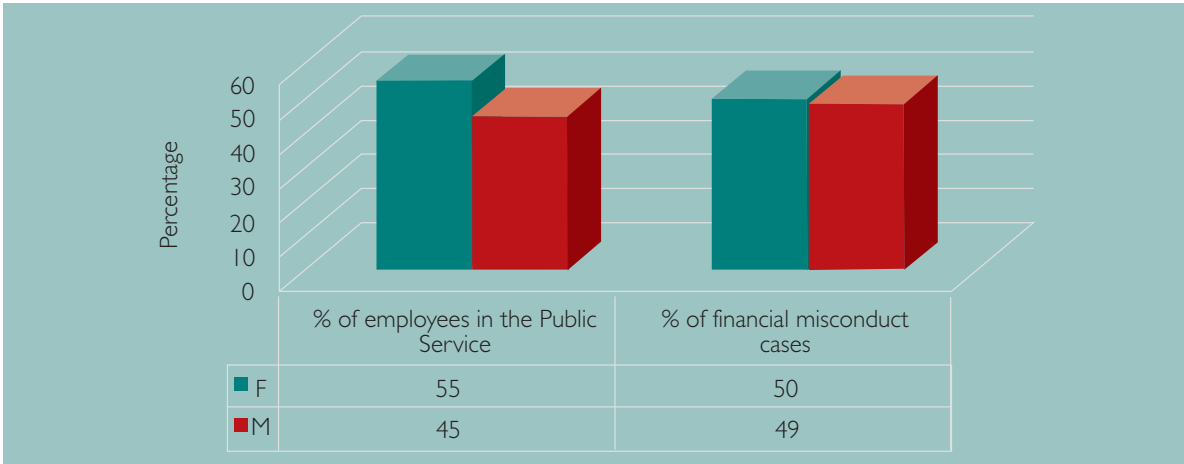


Figure 19: Comparison of the percentage of the total number of employees in relation to gender and the percentage of the total number of finalised financial misconduct cases reported

¹⁴ Information provided by the Department of Public Service and Administration.

Figure 19 illustrates that the distribution of cases involving financial misconduct for the 2007/2008 financial year in respect of females and males closely correlates with the employee demographics as at 30 May 2008. Nonetheless, males show a greater propensity to commit financial misconduct, as 49% of all employees charged with misconduct were male, whereas they only comprise 45% of total number of employees in the Public Service.

The types of financial misconduct cases discussed in paragraph 3.3 above were further categorised in terms of gender. **Figure 20** below contains an analysis of the percentage of the types of financial misconduct in respect of gender.

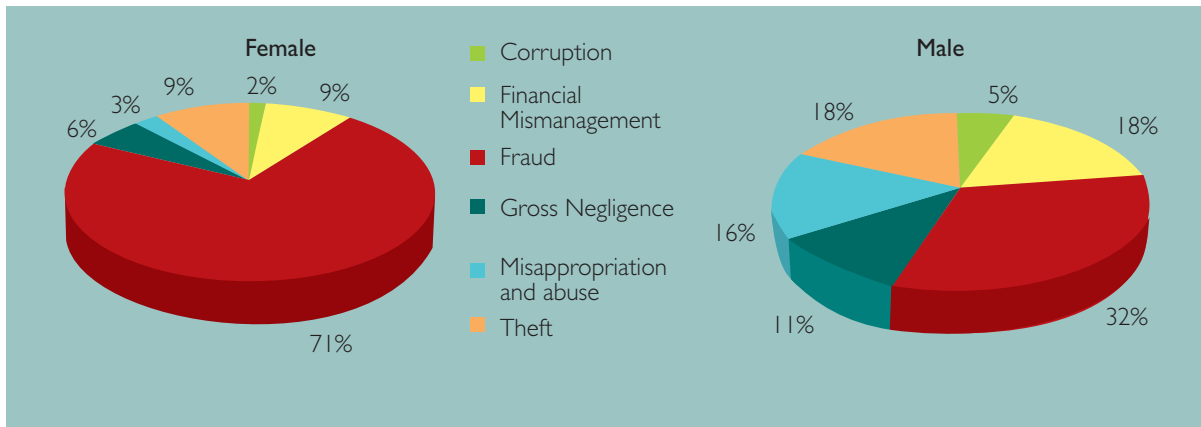
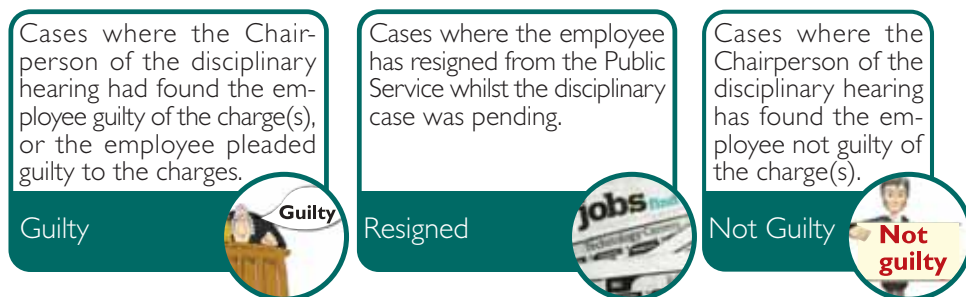


Figure 20: Percentage of the types of financial misconduct in respect of gender

Figure 20 indicates that in respect of the 436 (50%) cases involving females, incidences of fraud constitute 296 (71%) of the total number of cases. In respect of the 425 (49%) cases involving males, 130 (32%) of the reported cases involved incidences of fraud. The 169 cases involving social grant fraud in respect of females comprised 57% of the cases in the category “Fraud”. The underlying assumption in most cases are that females are caregivers and more likely to be recipients of social grants. This could be the reason for the high incidence of fraud cases amongst females in relation to social grants.

3.6 OUTCOME OF FINANCIAL MISCONDUCT CASES

The Treasury Regulations provides for departments to report on the outcome of disciplinary proceedings. The outcome of a case is regarded as the decision made by the Chairperson of the disciplinary hearing at the conclusion of the hearing. For statistical purposes the outcome of cases reported by departments were categorised as reflected in **Figure 21** below.



Cases where the employee was charged with misconduct, but the charge(s) was/were withdrawn. The reasons for the withdrawal of the charges are ascribed to a lack of evidence, the time frame since the incident occurred, the employee repaying the loss and in some cases the transfer of the employee to another department.

Withdrawn



Cases where, whilst the disciplinary case was pending-

- the employee's fixed term contract of employment expired;
- the employee had attained the prescribed retirement age and retired from the Public Service;
- the employee has passed on; and
- the employee absented him/herself from his/her official duties without permission for a period exceeding one calendar month.

Contract expired/ Retired/
Deceased/ Absconded



Figure 21: Types of outcomes of finalised financial misconduct cases reported

Figure 22 below provides an illustration of the outcome of financial misconduct cases reported to the PSC during the 2007/2008 financial year:

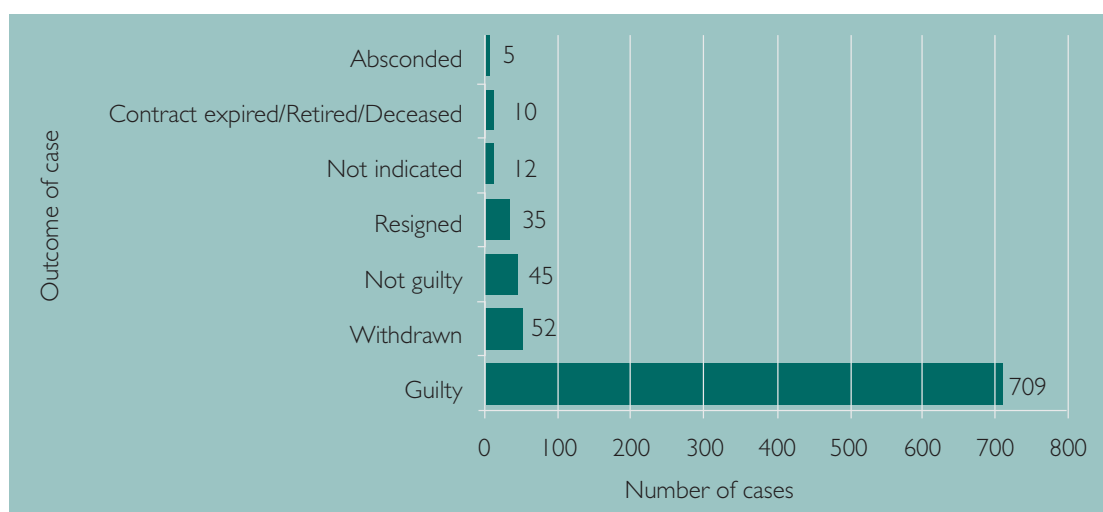


Figure 22: Outcome of financial misconduct cases for the 2007/2008 financial year

Figure 22 reflects that of the **868** finalised financial misconduct cases reported, employees were found guilty of misconduct in 709 (82%) cases. The percentage of employees found guilty is very similar to the percentage in the 2006/2007 financial year where 859 (84%) of officials charged with financial misconduct were found guilty. This trend points to the fact that once an employee is charged with misconduct, departments are able to successfully prove the allegations made against employees.

3.7 SANCTIONS IMPOSED IN CASES OF FINANCIAL MISCONDUCT

In terms of section 38 of the PFMA¹⁵, the accounting officer of a department must take effective and appropriate disciplinary steps against an employee who contravenes or fails to comply with the provisions of the PFMA and/or who undermines the financial management and internal control system of the department. This is put into effect by various procedures pertaining to disciplinary action that are applicable in the Public Service, depending on the legislation in terms of which an employee is employed, e.g. the Public Service Act, 1994¹⁶, the South African Police Service Act¹⁷, 1995 and the Defence Act, 1957¹⁸.

The figure below indicates the type of sanctions imposed by the departments for the financial year 2007/2008.

¹⁵ Republic of South Africa. The Public Finance Management Act 1 of 1999.

¹⁶ Republic of South Africa. The Public Service Act 103 of 1994 (as amended).

¹⁷ Republic of South Africa. The South African Police Service Act 68 of 1995.

¹⁸ Republic of South Africa. The Defence Act 44 of 1957.

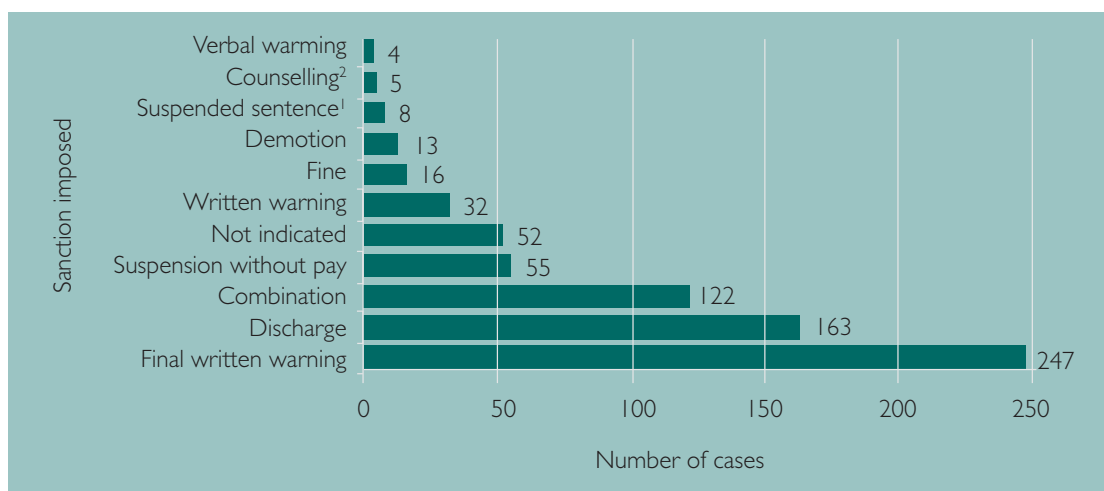


Figure 23: Sanctions imposed in financial misconduct cases

Note: ¹ Sanction imposed in terms of the Defence Act, 1957

² "Combination" means those cases where the chair of the disciplinary hearing pronounced a combination of sanctions as provided for in clause 7.4(a)(v) of the Disciplinary Code and Procedures, e.g. a final written warning and suspension without pay.

Figure 23 above indicates that for the 2007/2008 financial year, final written warnings were issued in 247 (34.4%) of the cases, and this was the most prevalent sanction imposed upon a finding of guilty. It was followed by 163 (22.7%) cases in which employees were discharged from the Public Service. The low percentage of cases whereby employees were discharged could point to the fact that departments did not regard all acts of financial misconduct to have an irretrievable effect on the employment relationship to the extent that they want to end the relationship.

3.8 COST OF FINANCIAL MISCONDUCT

As financial misconduct cases involving fraud, theft, misappropriation and abuse, and gross negligence are often detected prior to a loss being suffered by departments, not all cases of financial misconduct will ultimately result in a loss to the State. The total cost reported by national and provincial departments emanating from unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct reported in respect of the 2007/2008 financial year was **R 21 776 948.93**.

During the same financial year, **R 8 805 596.00** (40%) of the R 21 776 948.93 was recovered from the employees found guilty of financial misconduct or the financial misconduct did not result in any loss to the State (e.g. a fraudulent Subsistence and Travel claim is not paid). Although the recovery of 40% of the R 21 776 948.93 seems low, it should be taken into consideration that departments have to report to the PSC on the outcome of the disciplinary case (when the case is finalised). However, the recovery of the value of the loss or damage associated with financial misconduct has not necessarily taken place at the time of reporting to the PSC.

Not all departments indicated the cost of financial misconduct and the amounts that have been recovered. The cost of financial misconduct and the recovery thereof may consequently be more. Although the PSC attempted to obtain information from departments relating to the recovery of losses associated with financial misconduct for previous financial year, departments had difficulty providing such information, and due to the inaccuracy of the information provided the PSC is not in a position to comment on the recovery of debt emanating from previous financial years.

A breakdown of the cost of financial misconduct reported at National and Provincial level is indicated on the following page.

3.8.1 Cost of financial misconduct reported at national level

Table 4 below reflects the cost of financial misconduct as reported by the national departments for the 2007/2008 financial year. In the said financial year, an amount of **R 9 841 112.77** was reported by national departments in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct. In respect of this amount, only an amount of **R 3 116 781.80** (32%) was recovered at the time of reporting to the PSC. This reflects that a substantial amount totaling **R 6 724 330.97** (68%) was not recovered at the time departments reported on the outcome of cases to the PSC.

Table 4: Cost of financial misconduct reported at national level

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Agriculture	R 2 500.00	R 2 500.00
Communications	R 7 784.87	R 7 784.87
Correctional Services	R 1 395 306.07	R 1 070 206.79
Defence	R 1 285 709.00	R 7 022.00
Education	R 150 124.80	R 0.00
Foreign Affairs	R 528 144.00	R 487 093.00
GCIS	R 974.13	R 0.00
Home Affairs	R 891 868.57	R 363 188.69
Housing	R 4 680.00	R 0.00
DOJCD	R 3 159 524.58	R 1 024 215.70
Labour	R 1 409 063.34	R 124.90
Land Affairs	R 102 800.00	R 3 000.00
Minerals and Energy	R 102 200.78	R 102 200.78
Public Service and Administration	R 337 052.00	R 0.00
Public Service Commission	R 6 263.65	R 6 263.65
SAPS	R 99 165.46	R 27 322.00
Science and Technology	R 12 982.00	R 0.00
Social Development	R 639.96	R 213.14
Sport and Recreation South Africa	R 24 443.00	R 0.00
Statistics South Africa	R 91 547.93	R 0.00
Trade and Industry	R 440.00	R 0.00
Water Affairs and Forestry	R 227 898.63	R 15 646.28
TOTAL	R 9 841 112.77	R 3 116 781.80
Amount not recovered		R6 724 330.97

The cost of financial misconduct is the highest in the DOJCD with the total cost of financial misconduct being R 3 159 524.58 (32%), followed by the Department of Labour with a cost of R 1 409 063.34 (14.3%).

Table 4 above shows that the Departments of Agriculture, Communication, and Minerals and Energy, as well as the Office of the Public Service Commission recovered the full amount applicable to the charges of misconduct and/or the charges resulted in no loss to the State. On the other hand, it is disconcerting to note that the departments mentioned in **Table 5** below indicated that they had not made any recovery in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from cases of financial misconduct finalised during the 2007/2008 financial year.

Table 5: Departments that had not made any recovery

DEPARTMENT	AMOUNT R/C
Education	R 150 124.80
GCIS	R 974.13
Housing	R 4 680.00
Public Service and Administration	R 337 052.00
Sport and Recreation South Africa	R 24 443.00
Statistics South Africa	R 91 547.93
Trade and Industry	R 440.00

3.8.2 Cost of financial misconduct reported at provincial level

3.8.2.1 Overall cost of financial misconduct in Provinces

An amount of **R 11 935 836.16** was reported by provinces in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct. **Figure 24** below reflects the cost of financial misconduct as reported by the provinces for the 2007/2008 financial year.

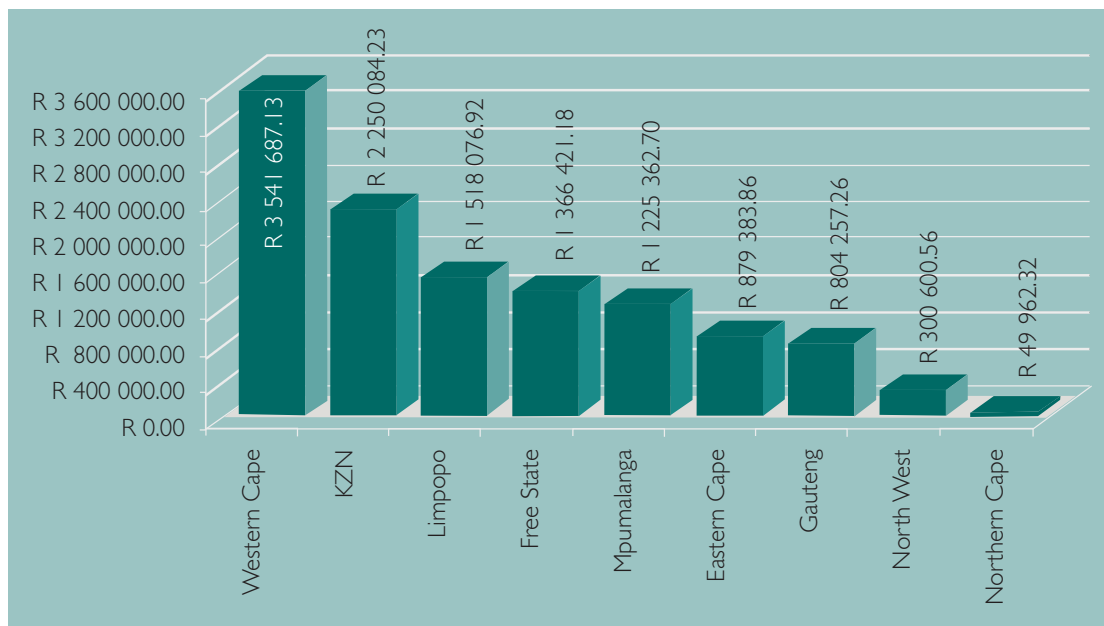


Figure 24: Cost of financial misconduct reported at provincial level

Figure 24 shows that the cost of financial misconduct has been the highest in the Western Cape Province with the total cost of financial misconduct being **R 3 541 687.13** (30% of the total cost of financial misconduct in provinces), followed by KwaZulu-Natal Province (**R 2 250 084.23**, representing 19% of the total cost of financial misconduct in provinces). The Northern Cape Province reported the lowest financial loss, **R 49 962.32** (0.4%), as a result of financial misconduct.

Only an amount of **R 6 247 221.25** (52%) of the total was recovered at the time of reporting to the PSC. This reflects that an amount totaling **R 5 688 814.20** (48%) was not recovered at the time departments reported on the outcome of cases to the PSC. These figures reflect that the Provinces fared much better in recovering monies associated with financial misconduct as compared to national departments, who only recovered R3 116 781.80 (32%) at the time of reporting to the PSC. The rate of recovery for Provinces has improved significantly from the previous cycle, as only R1 193 987.97 (1%) had been recovered in the

2006/2007 financial year. In contrast to this, the national department's rate of recovery has dropped significantly from R19 644 693.77 (45%) in the 2006/2007 financial year, to the current R3 116 781.80 (32%).

3.8.2.2 Cost of financial misconduct reported by the Eastern Cape Province

An amount of **R 879 383.86** was reported by the Eastern Cape Province in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct. **Table 6** below reflects the cost of financial misconduct as reported by departments in the Eastern Cape Province for the 2007/2008 financial year.

Table 6: Cost of financial misconduct reported by the Eastern Cape Province

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Education	R 367 095.42	R 12 400.00
Provincial Treasury	R 2 160.00	R 2 160.00
Public Works	R 479 235.44	R 268 229.19
Roads and Transport	R 25 000.00	R 25 000.00
Sport, Recreation, Arts and Culture	R 5 893.00	0
TOTAL	R 879 383.86	R 307 789.19
Amount not recovered		R 571 594.61

Table 6 above shows that an amount of **R 307 789.19** (35%) was recovered by the Eastern Cape Province at the time of reporting to the PSC. An amount totaling **R 571 594.67** (65%) was not recovered at the time departments reported on the outcome of cases to the PSC. **Table 6** also reflects that the Department of Roads and Transport in the Province recovered the full amount (R25 000.00) applicable to the charges of misconduct and/or the charges resulted in no loss to the State for the 2007/2008 financial year.

3.8.2.3 Cost of financial misconduct reported by the Free State Province

An amount of **R 1 366 421.18** was reported by the Free State Province in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct. **Table 7** below reflects the cost of financial misconduct as reported by departments in the Free State Province for the 2007/2008 financial year.

Table 7: Cost of financial misconduct reported by the Free State Province

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Education	R 150 692.00	R 25 727.00
Health	R 1 130 049.39	R 66 000.00
Public Works, Roads and Transport	R 27 406.00	R 400.00
Sport, Recreation, Arts and Culture	R 33 303.00	R 11 650.00
Tourism, Environmental and Economic Affairs	R 24 970.79	R 100.00
TOTAL	R 1 366 421.18	R 103 877.00
Amount not recovered		R 1 262 544.18

The Free State Province recovered an amount of **R103 877.00** (8%) at the time of reporting to the PSC. An amount totaling **R 1 262 544.18** (92%) was not recovered at the time departments reported on the outcome of cases to the PSC. This is worrying as the Free State Province is amongst the departments with the highest overall cost of financial misconduct in the provinces.

3.8.2.4 Cost of financial misconduct reported by the Gauteng Province

An amount of **R 804 257.26** was reported by the Gauteng Province in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct. **Table 8** below reflects the cost of financial misconduct as reported by departments in the Gauteng Province for the 2007/2008 financial year.

Table 8: Cost of financial misconduct reported by the Gauteng Province

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Agriculture, Conservation, Environment	R 3 000.00	0
Education	R 62 369.12	0
Health	R 162 868.19	R29 815.00
Social Development	R 72 000.00	R72 000.00
Sports, Arts, Culture and Recreation	R 504 019.95	0
TOTAL	R 804 257.26	R101 815.00
Amount not recovered		R702 442.26

Table 8 above shows that an amount of **R 101 815.00** (13%) was recovered by the Gauteng Province at the time of reporting to the PSC. An amount totaling **R 702 442.26** (87%) was not recovered at the time departments reported on the outcome of cases to the PSC. The Departments of Agriculture, Conservation and Environment, Education and Sports, Arts, Culture and Recreation indicated that they had not made any recovery in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from cases of financial misconduct finalised during the 2007/2008 financial year.

3.8.2.5 Cost of financial misconduct reported by the KwaZulu-Natal Province

An amount of **R 2 250 084.23** was reported by the KwaZulu-Natal Province in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct. **Table 9** below reflects the cost of financial misconduct as reported by departments in the KwaZulu-Natal Province for the 2007/2008 financial year.

Table 9: Cost of financial misconduct reported by the KwaZulu-Natal Province

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Economic Development	R19 000.00	R19 000.00
Education	R 874 116.70	0
Health	R 1 280 731.04	R1 276 592.04
Local Government and Traditional Affairs	R 76 236.49	R4 210.59
TOTAL	R 2 250 084.23	R1 299 082.63
Amount not recovered		R951 001.60

KwaZulu-Natal Province recovered an amount of **R 1 299 082.63** (58%) at the time of reporting to the PSC. An amount totaling **R 951 001.60** (42%) was not recovered at the time departments reported on the outcome of cases to the PSC. KwaZulu-Natal is also amongst the provinces with highest overall cost of financial misconduct, and thus the rate of recovery although not bad, is disconcerting.

3.8.2.6 Cost of financial misconduct reported by the Limpopo Province

An amount of **R 1 518 076.92** was reported by Limpopo Province in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct. **Table 10** below reflects the cost of financial misconduct as reported by departments in Limpopo Province for the 2007/2008 financial year:

Table 10: Cost of financial misconduct reported by the Limpopo Province

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Economic Development, Environment & Tourism	R 7 072.16	R 5 990.00
Health & Social Development	R 39 156.26	R 3 838.67
Local Government and Housing	R 947 335.24	R 614 549.16
Roads and Transport	R 524 513.26	R 1 102.88
TOTAL	R 1 518 076.92	R 625 480.71
Amount not recovered		R 892 596.21

Table 10 above shows that an amount of **R 625 480.71** (41%) was recovered by Limpopo Province at the time of reporting to the PSC. An amount totaling **R 892 596.21** (59%) was not recovered at the time departments reported on the outcome of cases to the PSC.

3.8.2.7 Cost of financial misconduct reported by the Mpumalanga Province

An amount of **R 1 225 362.70** was reported by Mpumalanga Province in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct. **Table 11** below reflects the cost of financial misconduct as reported by departments in Mpumalanga Province for the 2007/2008 financial year:

Table 11: Cost of financial misconduct reported by the Mpumalanga Province

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Culture, Sport and Recreation	R 7 800.00	0
Education	R 1 022 130.22	R 994 500.00
Finance	R 1 400.15	R 1 400.15
Health and Social Services	R 128 000.00	0
Local Government and Housing	R 65 857.12	0
Roads and Transport	R 175.21	R 175.21
TOTAL	R 1 225 362.70	R 996 075.36
Amount not recovered		R 229 287.34

The Mpumalanga Province recovered an amount of **R 996 075.36** (81%) at the time of reporting to the PSC. An amount totaling **R 229 287.34** (19%) was not recovered at the time departments reported on the outcome of cases to the PSC. The Departments of Finance, and Roads and Transport recovered the full amount applicable to the charges of misconduct and/or the charges resulted in no loss to the State. On the other hand, it is disconcerting to note that the Departments of Culture, Sport and Recreation, Health and Social Services and Local Government and Housing indicated that they had not made any recovery in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from cases of financial misconduct finalised during the 2007/2008 financial year.

3.8.2.8 Cost of financial misconduct reported by the North West Province

An amount of **R 300 600.56** was reported by the North West Province in respect of unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct. **Table 12** below reflects the cost of financial misconduct as reported by departments in the North West Province for the 2007/2008 financial year.

Table 12: Cost of financial misconduct reported by the North West Province

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Agriculture, Conservation, Environment	R 101 752.10	R 6 751.10
Economic Development and Tourism	R 64 216.80	0
Education	R 64 378.52	R 40 346.86
Health	R 22 525.00	R 14 121.00
Public Works	R 32 184.16	R 500.00
Social Development	R 15 543.98	R 1 396.98
TOTAL	R 300 600.56	R 63 115.94
Amount not recovered		R 237 484.62

Table 12 above shows that an amount of **R 63 115.94** (21%) was recovered by the North West Province at the time of reporting to the PSC. An amount totaling **R 237 484.62** (79%) was not recovered at the time departments reported on the outcome of cases to the PSC. The Department of Economic Development and Tourism indicated that they had not made any recovery in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from cases of financial misconduct finalised during the 2007/2008 financial year.

3.8.2.9 Cost of financial misconduct reported by the Northern Cape Province

An amount of **R 49 962.32** was reported by the Northern Cape Province in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct. **Table 13** on the following page reflects the cost of financial misconduct as reported by departments in the Northern Cape Province for the 2007/2008 financial year.

Table 13: Cost of financial misconduct reported by the Northern Cape Province

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Education	R10 000.00	R10 000.00
Health	R 2 500.00	0
Housing and Local Government	R 1 466.10	R 1 466.10
Provincial Treasury	R 19 449.06	R 19 449.06
Social Services and Population Development	R 16 547.16	R 9 000.00
TOTAL	R49 962.32	R 39 915.16
Amount not Recovered		R 10 047.16

The Northern Cape Province recovered an amount of **R 39 915.16** (80%) at the time of reporting to the PSC. An amount totaling **R 10 047.16** (20%) was not recovered at the time departments reported on the outcome of cases to the PSC. The Departments of Education, and Housing and Local Government recovered the full amount applicable to the charges of misconduct and/or the charges resulted in no loss to the State.

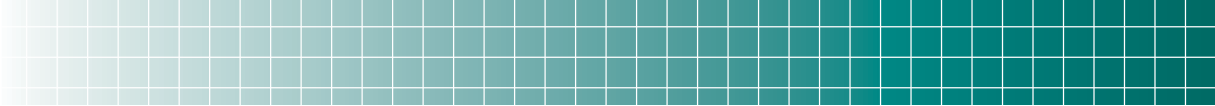
3.8.2.10 Cost of financial misconduct reported by the Western Cape Province

An amount of **R 3 541 687.13** was reported by the Western Cape Province in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct. **Table 14** below reflects the cost of financial misconduct as reported by departments in the Western Cape Province for the 2007/2008 financial year.

Table 14: Cost of financial misconduct reported by the Western Cape Province

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Community Safety	R 861 095.46	0
Cultural Affairs and Sport	R 12 880.00	0
Education	R 204 935.94	R 109 172.57
Health	R 413 588.97	R 28 738.00
Local Government and Housing	R 2 043 666.76	R 2 012 842.64
Social Services and Poverty Alleviation	R 910.00	R 910.00
Transport and Public Works	R 4 610.00	0
TOTAL	R 3 541 687.13	R 2 151 663.21
Amount not recovered		R 1 390 023.92

Table 14 above shows that an amount of **R 2 151 663.21** (61%) was recovered by Western Cape Province at the time of reporting to the PSC. An amount totaling **R 1 390 023.92** (39%) was not recovered at the time departments reported on the outcome of cases to the PSC. The Departments of Community Safety, Cultural Affairs and Sport, and Transport and Public Works indicated that they had not made any recovery in respect of unauthorised, irregular, fruitless and wasteful expenditure, as well as losses resulting from cases of financial misconduct finalised during the 2007/2008 financial year.



The PFMA requires departments to include in their annual reports and financial statements particulars of, among others, any material losses through criminal conduct, any criminal and disciplinary steps taken as a result of such losses and any material losses recovered or written off. Departments should therefore not have difficulty in reporting such information to the PSC. However, providing information on the cost of financial misconduct remains a major challenge for departments.

3.9 CRIMINAL PROCEEDINGS INSTITUTED AGAINST EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

Whilst there are clear prescripts detailing how employees that make themselves guilty of criminal acts or possible criminal acts or omissions should be dealt with in the Public Service, departments have consistently failed to demonstrate commitment in instituting criminal charges where appropriate. In this regard the following two prescripts are appropriate:

3.9.1 Treasury Regulations, 2002¹⁹

Treasury Regulation 12.5 determines that when it appears that the State has suffered losses or damages through criminal acts or possible criminal acts or omissions, the matter must be reported, in writing, to the accounting officer and the SAPS.

Treasury Regulation 4.3.1 determines that the accounting officer of the department must advise, amongst others, the PSC of any further action taken against an official, including criminal charges or civil proceedings.

3.9.2 Prevention and Combating of Corrupt Activities (PCCA) Act, 2004²⁰

Furthermore, the PCCA Act criminalises any act falling within the broad category of corruption. In terms of subsection 34(1) of the PCCA Act any person who holds a “position of authority” is compelled to report offences of theft, fraud, extortion, forgery or uttering of a forged document involving amounts of R100 000.00 or more to the SAPS. Section 34(4) of the PCCA Act defines a position of authority to include a Director-General or head or equivalent officer of a national or provincial department. The PCCA Act therefore criminalises a failure to report offences such as theft and fraud involving amounts of R100 000.00 and more to the SAPS and such an offence is punishable by a fine or imprisonment for a period not exceeding 10 years.

Although the above prescripts provide for mandatory reporting requirements, the level of reporting on the institution of criminal proceedings remains dismal.

3.9.3 Reporting on criminal proceedings by national and provincial departments

In view of the above, departments were in the reporting format requested to indicate whether criminal or civil proceedings had been instituted against an employee charged with financial misconduct. As not all acts of financial misconduct, such as gross negligence and financial mismanagement, will constitute a criminal act, departments were requested to indicate the reasons where decisions were taken not to institute criminal or civil proceedings against an employee. **Figure 25** below provides a breakdown of the responses by departments in regard to the institution of criminal and/or civil proceedings against employees found guilty of financial misconduct.

¹⁹ Republic of South Africa. Treasury Regulations, 2002, published in Government Gazette No. 23463 dated 25 May 2002.

²⁰ Prevention and Combating of Corrupt Activities Act No. 12 of 2004.

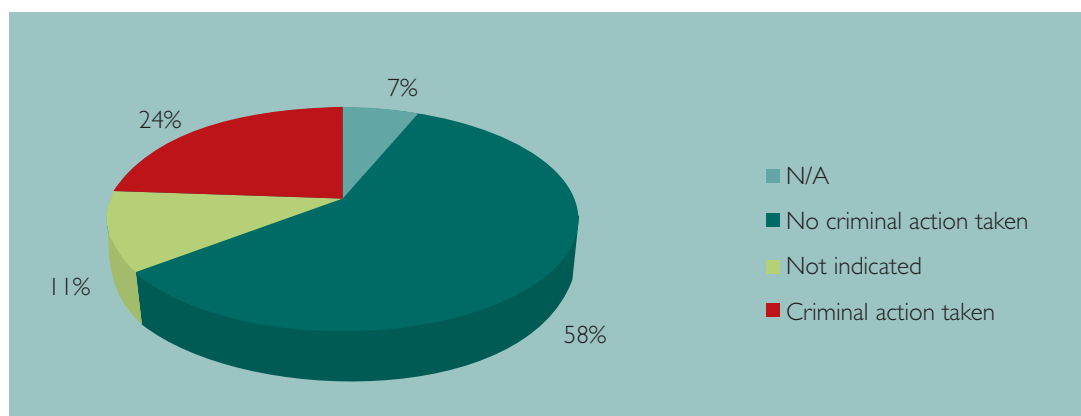


Figure 25: Breakdown of the responses by departments in regard to further action taken against employees

For the 2007/2008 financial year criminal proceedings were instituted against employees in 210 (24%) of the cases. In 505 (58%) of the finalised cases for the financial year 2007/2008, no criminal proceedings were instituted against employees. In 98 cases (11%) departments failed to provide any indication whether criminal or any other proceedings were instituted against employees charged with financial misconduct.

Although departments were requested to ensure that if no criminal action was taken against an employee that made themselves guilty of financial misconduct, the reasons for such a decision should be provided, departments failed to provide such information in 442 out of 505 (88%) of the instances. It is therefore not possible to determine the reasons for not instituting criminal action.

In assessing compliance with subsection 34(1) of the PCCA Act²¹, it was found that of the 47 (5.4%) cases involving amounts of R100 000.00 and more, criminal action were taken in 18 (38%) instances. In the remaining 29 (62%) cases the following emerged:

- In 21 instances where no criminal action was taken by a department, departments failed to indicate the reasons for such a decision.
- In three (3) cases involving misappropriation and abuse in the Departments of Land Affairs (R102 800.00) and Health in the Free State Province (R102 373.00 and R130 000.00), the departments failed to indicate whether or not criminal action was taken.
- In four (4) cases involving financial mismanagement in the Departments of DOJCD (R215 161.97), Education (R150 124.80), Education in the Eastern Cape Province (R193 139.75) and Public Works in the Eastern Cape Province (R268 229.19), the departments failed to indicate whether or not criminal action was taken.
- In one (1) case in the Department of Health: Free State Province, involving fraud amounting to R379 716.90, the department failed to indicate whether or not any criminal action was taken.

Following an analysis of cases in the categories “fraud”, “theft” and “corruption” (refer to paragraph 3.3 in relation to the types of financial misconduct), it was found that departments indicated in 6 cases that criminal proceedings were not instituted against employees who had committed financial misconduct in excess of R100 000.00. Although the reporting format of the PSC provides for departments to indicate the reasons why criminal action was not taken against an employee, departments did not provide any reasons in 4 instances mentioned in **Table 15** on the following page.

²¹ Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004.

Table 15: Individual amounts exceeding R100 000.00 not reported

PROVINCE	DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED R/C	REASON FOR NO CRIMINAL ACTION TAKEN
Limpopo	Local Government and Housing (2 cases)	307 274.58	307 274.58	Conduct was due to unlawful instructions
		307 274.58	307 274.58	
National	Correctional Services	398 456.23	398 456.23	Not indicated
	DOJCD	351 000	351 000	Not indicated
		120 700	0	Not indicated
		102 318	0	Not indicated

The fact that departments were not willing to divulge the reasons for not taking criminal action could point to undue leniency being given to officials due to compassionate or other reasons.

Chapter Four

Trend Analysis of Cases Reported since the 2001/2002 Financial Year

4.1 INTRODUCTION

This Chapter presents a trend analysis of the information reported by national and provincial departments for the period 01 April 2007 until 31 March 2008, as well as information contained in the PSC's reports on financial misconduct for previous financial years. Over the past seven financial years, the PSC has improved its reporting format. Therefore, in some instances information may not be readily available for the purpose of drawing comparisons across the entire seven year period.

4.2 DECREASE IN FINANCIAL MISCONDUCT CASES FOR THE 2007/2008 FINANCIAL YEAR

Citizens expect public servants to serve the public interest in a transparent and efficient manner, and to manage public resources appropriately. Transparency in the management of public resources inspires public trust and ultimately contributes to economic growth.

Figure 26 below reflects the number of finalised financial misconduct cases reported during the past seven financial years. It also contains a trend line reflecting the general direction in which misconduct is heading over a seven year period.

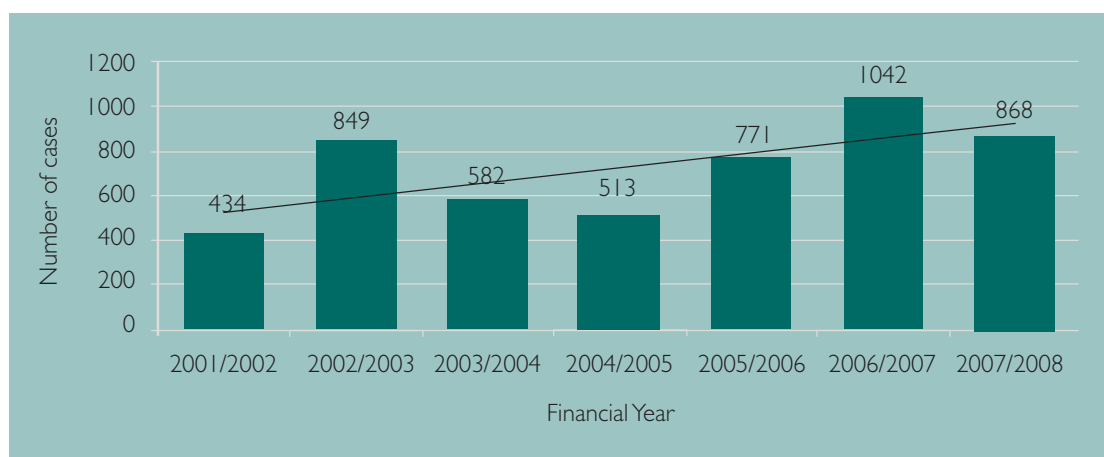


Figure 26: Number of reported cases for the financial years 2001/2002 until 2007/2008

Over the past seven financial years, not all national and provincial departments have submitted reports on financial misconduct to the PSC, which made it difficult to determine whether there had been an increase or decrease in the number of cases of financial misconduct. However, the monitoring of statistics provided during this period did provide a useful trend line to draw deductions from. In the 2007/2008 financial year only the Royal Household in KwaZulu-Natal Province failed to submit an input to the PSC. Due to the relatively small size of the Department, it is unlikely that their input would have a significant impact on the overall number of cases. During the 2006/2007 financial year, the total number of reported cases was 1042. This was the highest number of reported cases since 2001/2002 when the PSC commenced with the monitoring of financial misconduct. Compared to the 2006/2007 financial year (1042), there has been a 17% decrease in cases of financial misconduct in the 2007/2008 financial year (868). However, the trend line in **Figure 26** above still shows an overall increase in cases of financial misconduct since the 2001/2002 financial year.

A breakdown of the total number of cases at national and provincial level for the previous five financial years is reflected in **Figure 27** below.

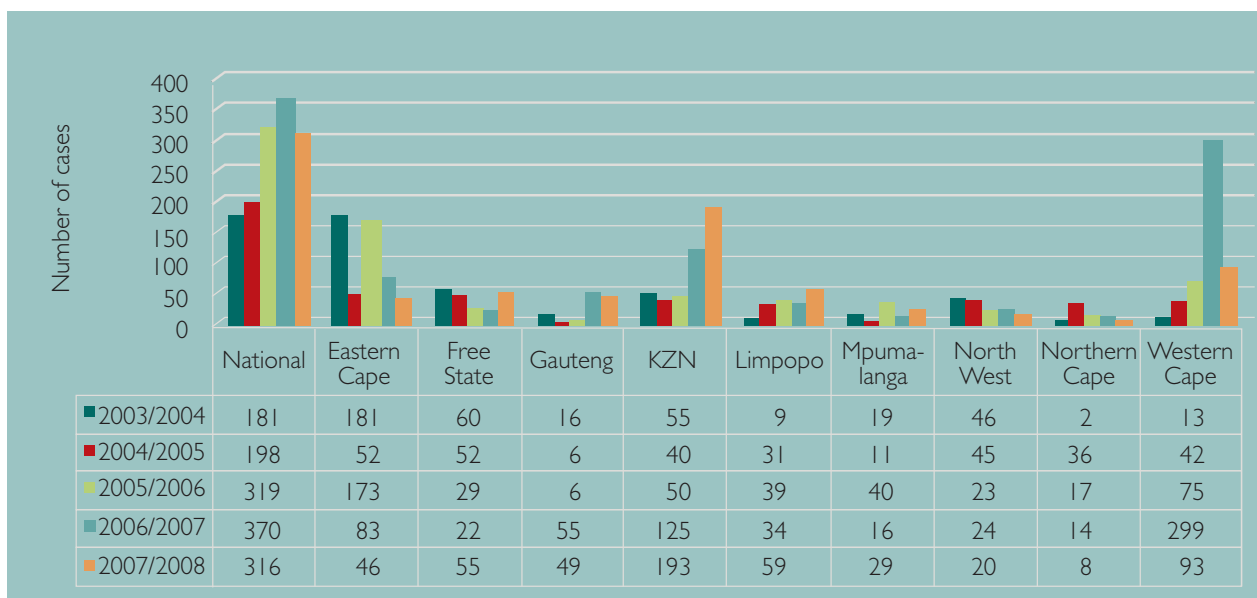


Figure 27: Number of cases on national and provincial level over the past five financial years

Figure 27 reflects that Free State (60%), KwaZulu-Natal (35%), Limpopo (42%) and Mpumalanga (45%) provinces had an increase in cases in the 2007/2008 financial year as compared to the 2006/2007 financial year. The Free State Province has since the 2001/2002 financial year sustained a decrease in reported cases for each financial year. However, the current number of 55 cases, represent a sharp increase from the 22 reported in the 2006/2007 financial year. The Western Cape Province, on the other hand, had a substantial decrease in cases from 299 to 93 cases (68%) in the 2007/2008 financial year.

In contrast, the figures relating to the national departments indicate a decline from the 2006/2007 financial year from 370 to 316 during the 2007/2008 financial year, which represents an overall decline of 14%. This decline is welcome as national departments have sustained an annual increase in the number of reported cases since the 2001/2002 financial year.

4.3 DECREASE IN CASES IN THE CATEGORIES “FRAUD” AND “THEFT”

The PSC has grouped the cases of financial misconduct reported by departments in accordance with the various categories (*vide* paragraph 3.3). Financial misconduct cases in the category “fraud” and “theft” have since the 2001/2002 financial year remained the category with the highest number of cases, whilst cases in the category “misappropriation and abuse”, were the second highest.

Figure 28 on the following page illustrates a comparison of cases falling in the categories “fraud” and “theft” reported for the past 7 financial years. It shows a decrease in cases in the categories “fraud” and “theft” in the 2007/2008 financial year.

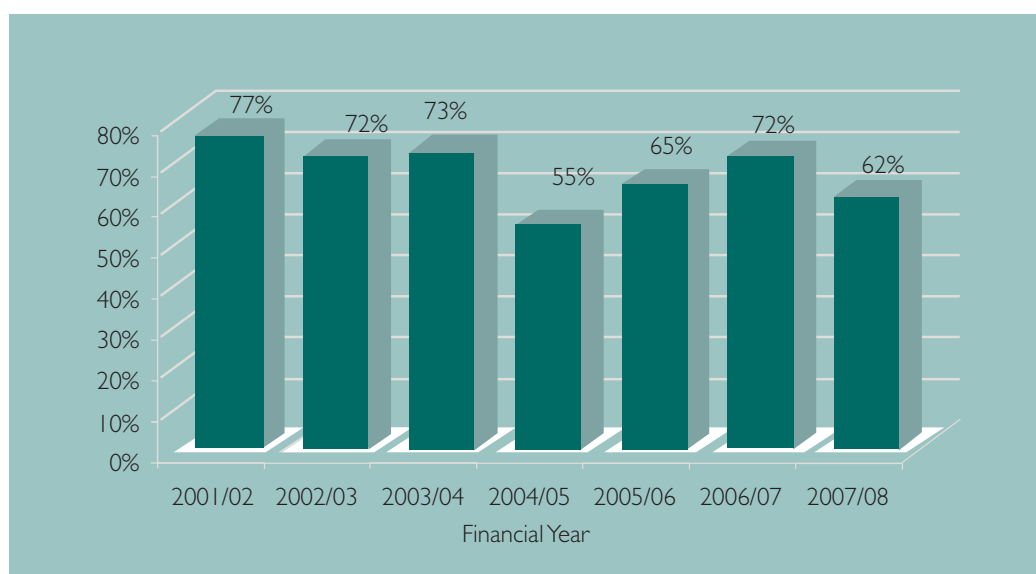


Figure 28: Fraud and theft cases reported for the financial years 2001/2002 until 2007/2008

Whilst there is a decrease in these categories, other categories have increased, most notably in the category “financial mismanagement”, comprising 13% of the total number of cases. This category was first reported in the 2006/2007 financial year (6.4% of the cases), and has therefore substantially increased in this financial year.

“Financial mismanagement is management that, deliberately or not, is handled in a way that can be characterised as “wrong, bad, careless, inefficient or incompetent” and that will reflect negatively upon the financial standing of a business or individual”

Although the PSC has not conducted research to determine the causes of financial mismanagement in the Public Service, the following factors could impact on the increase in cases:

- Human resources capacity, referring to knowledge, skills and staffing levels. In this regard, the PSC’s research²² shows that 58% of SMS members indicated their need for training in Financial Management as a Core Management Criteria.
- Lack of proper supervision in the execution of functions, which results in employees conducting financial transactions without proper guidance, and thus increasing the risk of mismanagement.
- Weak systems and procedures (internal controls) that fail to detect irregular financial transactions, and allow financial mismanagement to go undetected.
- Weak and unclear reporting and accountability frameworks applicable within Departments, which result in financial decisions and transaction being handled by unauthorised persons.

4.4 INCREASE IN THE PERCENTAGE OF SMS MEMBERS CHARGED WITH FINANCIAL MISCONDUCT

The introduction of the SMS Competency Framework, as contained in the Performance Management and Development System for the SMS²³ was seen as a major step in ensuring that the Public Service achieves its objective of establishing a professional Public Service. The SMS Competency Framework consists of a set of eleven generic competencies that communicates what is expected of Senior Managers. Financial management is one of these competencies and deals with the ability to compile and manage budgets, control cash flow, institute risk management and administer tender procurement processes in accordance with generally recognised financial practices in order to ensure the achievement of strategic organisational objectives. Due to their constant involvement in financial management, SMS members are therefore more likely to be exposed to circumstances that may lead to transgressions of the PFMA.

²² Report on the Evaluation of the Training Needs of Senior Managers in the Public Service. Public Service Commission. January 2008.

²³ Republic of South Africa, Senior Management Service Handbook, Chapter 4.

Figure 29 below provides a comparison with the number of misconduct cases per salary category for the past five financial years (2003/2004 until 2007/2008).

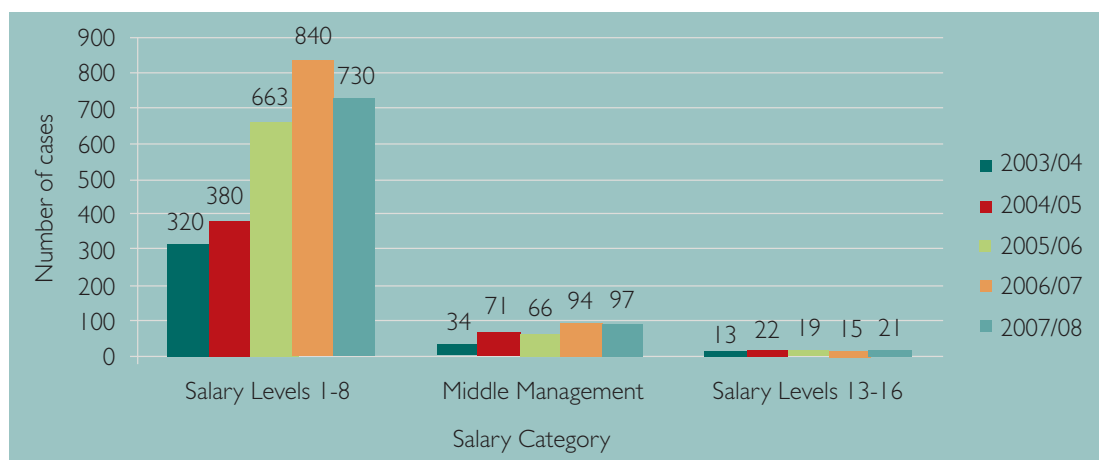


Figure 29: Number of cases per salary category

In terms of **Figure 29** the distribution of finalised financial misconduct cases over the past five financial years remained very similar, with financial misconduct at salary levels 1 to 8 being the most prevalent. However, there has been an increase in the percentage of SMS members found guilty of financial misconduct from 1.6% in the 2006/2007 to 2.4% in the 2007/2008 financial years. Of concern to the PSC is that this is substantially above the percentage of SMS members employed on salary levels 13 to 15 (0.7%), and this gives the impression that SMS members show a greater propensity to commit financial misconduct. This trend needs to be urgently acted upon, to dispel this perceived correlation. More concerning, if the correlation is correct, an urgent and deeper response is needed.

Again this trend is in line with research by the PSC²⁴ which shows that 58% of SMS members have identified the need for training in Financial Management as a Core Management Criteria, and that Senior Managers need to understand their procurement and supply chain responsibilities and obtain skills in this regard.

4.5 INCREASE IN FINANCIAL MISCONDUCT CASES IN RESPECT OF MALES

In order to enhance analysis and establish trends, the PSC requested departments to report on the gender of the employees against whom the disciplinary proceedings were instituted with effect from the 2005/2006 financial year.

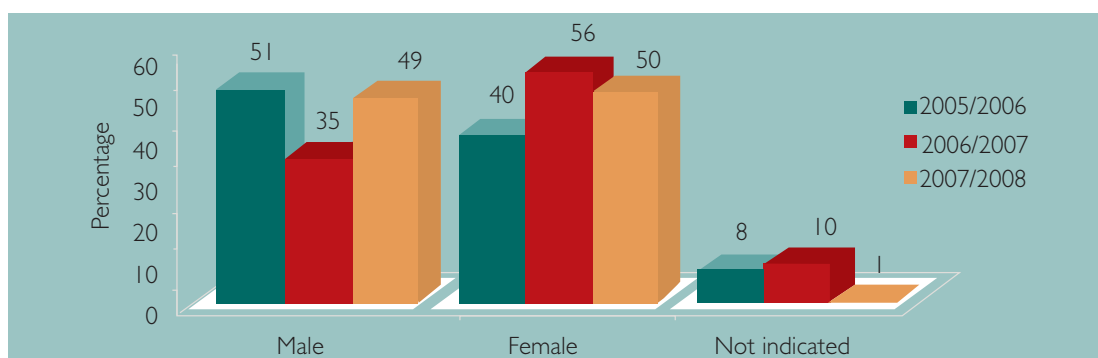


Figure 30: Gender of employees in respect of financial misconduct cases in the 2005/2006 and 2006/2007 financial years

²⁴ Report on the Evaluation of the Training Needs of Senior Managers in the Public Service. Public Service Commission, January 2008.

The gender distribution of employees in respect of financial misconduct cases as illustrated in **Figure 30** on the previous page differs substantially from the previous financial year in that the number of cases reported in respect of males in the 2006/2007 financial year increased from 35% to 49% in the 2007/2008 financial year. It was noted in the 2006/2007 financial year that the social grant fraud cases had a significant impact on the increase in females found guilty of financial misconduct²⁵. In the 2007/2008 financial year, the number of social grant fraud cases reported in respect of females (37%) was substantially less as compared to the 2006/2007 financial year (49%), and could be the reason for the decrease in cases involving females.

It was interesting to note that in a study by the Australian Institute of Criminology, it was found that nearly 70% of female offenders in the study were accused of committing their offences during the course of their occupation, as opposed to non-employment-related acts²⁶. Mention was also made of the fact that women who commit white-collar crime were more likely to do so due to family needs than to fund high living, unlike their male counterparts.

4.6 OUTCOME OF CASES OF FINANCIAL MISCONDUCT REMAINS CONSTANT

Figure 31 provides an exposition of the outcome of financial misconduct cases for the past four financial years.

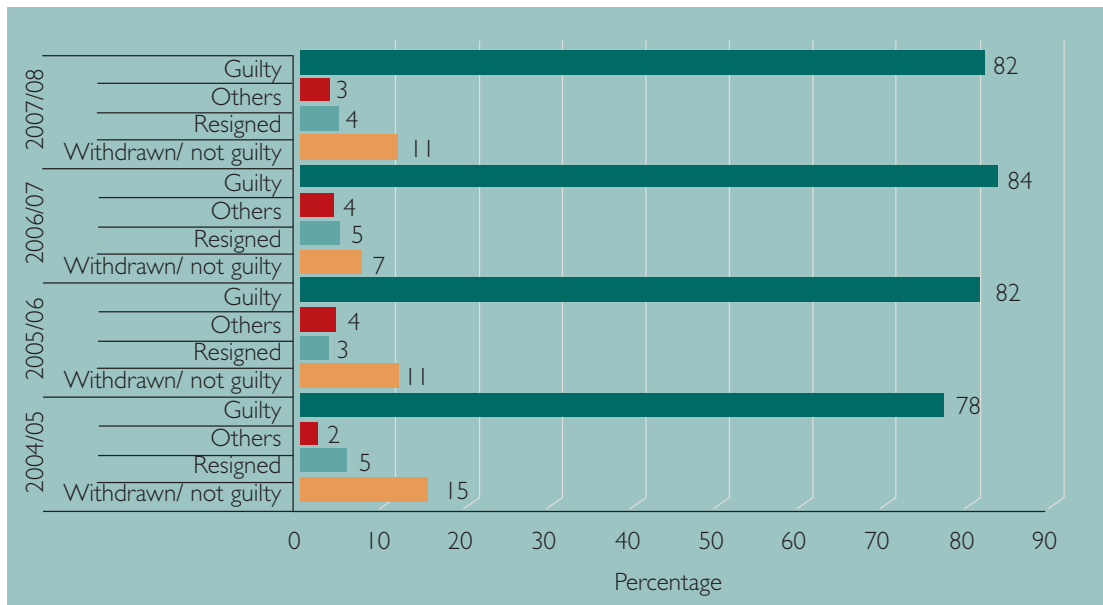


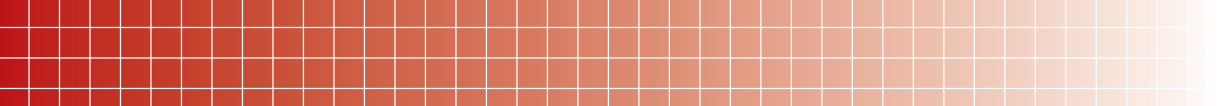
Figure 31: Outcome of financial misconduct cases for the past five financial years

Figure 31 reflects that over the past four financial years, employees have been found guilty following charges of financial misconduct in an average of 81% of the cases. This trend reflects that there was substance in the allegations brought against officials, and portrays positive signals on the application of disciplinary proceedings in the Public Service. In the 2007/2008 financial year, 11% of employees were found not guilty or the cases against them were withdrawn. This trend is similar to the 2005/2006 financial year, where employees were also found not guilty or the cases against them were withdrawn in 11% of the cases. This could possibly be ascribed to a lack of expertise on the part of departments to deal with allegations of financial misconduct effectively. This trend is also in keeping with the observations made in the PCS's Report on Measuring the Effectiveness of the NACH²⁷ indicating that investigative capacity in departments appears to be limited. It was also stated that on numerous occasions cases emanating from the NACH are referred back to departments for further investigation as critical issues related to such cases have not been adequately addressed. The PSC has continuously called for the improvement of the investigative capacity of departments to effectively deal with cases of corruption.

²⁵ Overview on Financial Misconduct for the 2006/2007 Financial Year. Public Service Commission, January 2008.

²⁶ <http://www.aic.gov.au/publications/tandiz/tandizazt.html>

²⁷ Republic of South Africa. Public Service Commission. Measuring the Effectiveness at the NACH. Pretoria 2007.



In respect of resignations by employees who are charged with financial misconduct, the PSC has always held the stance that such employees get off scot free and a mechanism should be established with due consideration to fair labour practice to curb such resignations in order to provide the Public Service with an opportunity to take appropriate action against them. Therefore, following discussions by the PSC with the DPSA during the drafting of the Public Service Amendment Act, the following section has been inserted in section 17 of the Public Service Amendment Act, 2007²⁸:

“(6) If notice of a disciplinary hearing was given to an employee, the relevant executive authority shall not agree to a period of notice of resignation which is shorter than the prescribed period of notice of resignation applicable to that employee.”

Departments would therefore have an opportunity to finalise cases of financial misconduct during the notice period of employees (normally a calendar month) and hold employees accountable for their actions.

4.7 INCREASE IN DISCHARGE FROM THE PUBLIC SERVICE AS AN APPROPRIATE SANCTION

According to Schedule 3(8) of the Labour Relations Act, 1995²⁹, the concept of corrective and progressive discipline is to apply when considering disciplinary action for misconduct. This concept of discipline can be expressed in terms of three principles:

- The purpose of discipline is a means of employees to know and understand what standards of behaviour are required of them.
- Efforts should be made to correct the employees behaviour through a graduated system of disciplinary measures with dismissal being the most severe form.
- It is generally not appropriate to dismiss for the first offence unless there is serious or grave misconduct.

In determining whether a dismissal for misconduct is warranted, the following factors should be taken into consideration:

- Did the employee breach a rule or standard?
- If yes, then was that rule valid or fair?
- Did the employee know of the rule or standard or could he or she be reasonably be expected to know?
- Was the rule or standard applied consistently?
- Was the dismissal an appropriate sanction for the contravention of the rule or standard?

Whilst departments are at liberty to impose a variety of sanctions for incidents of misconduct, as provided for in their respective disciplinary procedures, the seriousness of offences classified under financial misconduct would justify a harsh sanction. Should a lenient sanction be imposed, the sanction may not serve as a deterrent to further incidents of financial misconduct. This does not however suggest that each case should not be considered on its own merits.

Figure 32 on the following page indicates the type of sanctions applied by the departments for the past four financial years (2004/2005 to the 2007/2008 financial year).

²⁸ Republic of South Africa, Public Service Amendment Act, Act No 30 of 2007, gazetted on 17 January 2008.

²⁹ Republic of South Africa, Labour Relations Act, Act No 66 of 1995, as amended.



Figure 32: Sanctions imposed in financial misconduct cases over the past five financial years

Note: ¹ "Combination" means those cases where the chair of the disciplinary hearing pronounced a combination of sanctions as provided for in clause 7.4(a)(v) of the Disciplinary Code and Procedures, e.g. a final written warning and suspension without pay.

² Sanction imposed in terms of the Defence Act, 1957.

The knowledge that disciplinary action may be taken against employees who transgress should motivate employees to accept those rules and standards of conduct that are desirable or necessary in achieving the goals and objectives of the Public Service. At the extreme end of the spectrum, when circumstances warrant and the relationship of trust has been irreparably severed, provision is made for the termination of the services of an employee.



From the 2002/2003 to the 2005/2006 financial year, discharge from the Public Service remained the most prevalent sanction followed by final written warnings. **Figure 32** above indicates that for the 2006/2007 financial year this trend has changed, whereby final written warnings are the most prevalent (36%) and the same applies for the 2007/2008 financial year (34.4%). In the latter year, however, the sanction of discharge from the Public Service was the second most prevalent at 22.7%. Presiding Officers have a discretion that they exercise on the sanction imposed, and the circumstances of the individual employees differ; and this does have an influence on the consistency of the sanction imposed. However financial misconduct is grave, and on the face of it, there is merit in a discharge sanction.

4.8 COST OF FINANCIAL MISCONDUCT LOWEST IN FOUR YEARS

Figure 33 below provides an overview of the cost of financial misconduct for the past six financial years.

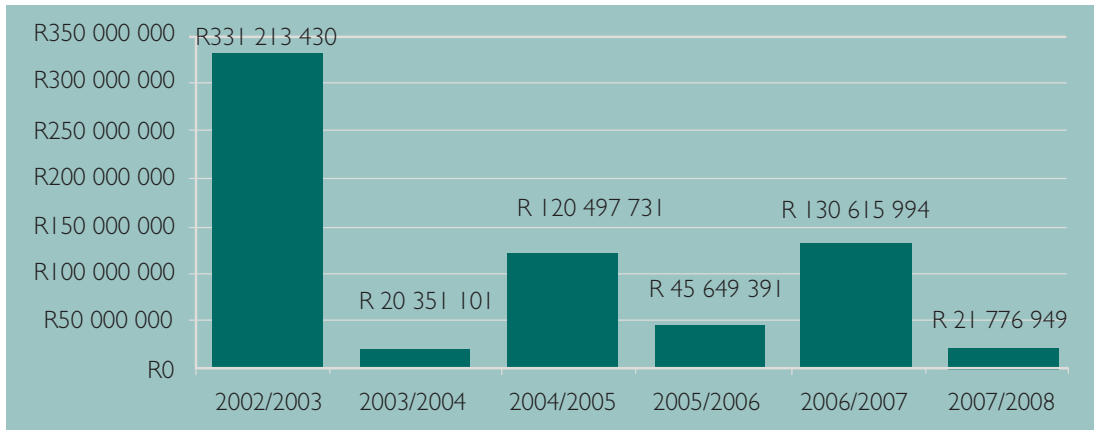


Figure 33: Total cost of financial misconduct per financial year

Figure 33 shows a significant decrease (83%) in the cost of financial misconduct from the 2006/2007 (R130 615 994) to the 2007/2008 (R21 776 948) financial year. The cost of financial misconduct is in actual fact the lowest in four years. Where there has been a spike in the cost of financial misconduct (2004/2005 and 2006/2007 financial years), these incidences were associated with one or two cases involving large amounts of money. This indicates that the cost associated with financial misconduct has remained fairly stable through the years. While the overall number of cases has gone up, it is encouraging to note that this increase has not spilled over, and translated into an increase in the cost of financial misconduct. Such encouragement however, must be tempered with urgent improvements resulting in less financial misconduct and losses of state resources.

4.9 DECLINE IN RATE AT WHICH CRIMINAL PROCEEDINGS ARE TAKEN IN CASES OF FINANCIAL MISCONDUCT

Figure 34 below depicts those cases where criminal proceedings were instituted against employees charged with financial misconduct for the financial years 2003/2004 to 2007/2008. It should, again, be noted that not all acts of financial misconduct will result in criminal or civil action being taken against an employee. For instance, cases of gross negligence and financial mismanagement will not necessarily involve criminal conduct.

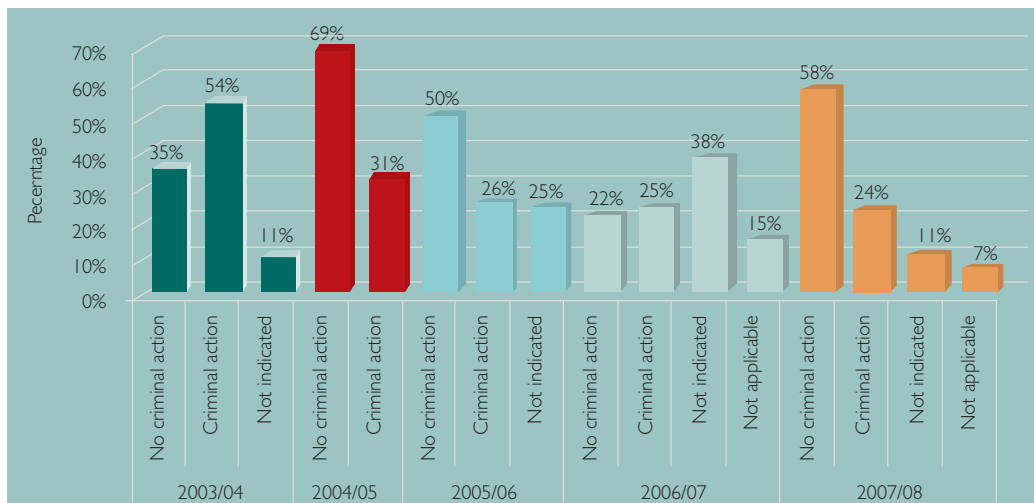


Figure 34: Criminal proceedings instituted against employees charged with financial misconduct

Figure 34 indicates that there is a generally low rate at which criminal proceedings were instituted over the past 5 financial years. In this regard, only an average 32% of finalised financial misconduct cases, were referred for institution of criminal proceedings. Although departments were requested to provide the reasons for not taking criminal action, they have generally failed to provide such information. Therefore, as departments failed to provide comprehensive information, it is not possible to accurately determine any trends or the specific reasons for not instituting criminal action.

According to a survey conducted by KPMG into Fraud and Misconduct in Africa in 2005³⁰ the main reasons for not reporting fraud to the police are, amongst others, “fear of negative publicity (40%)”, “Desire not to tie up resources for years with criminal case (46%)”, “No confidence in the ability of the police (50%)”, and “No chance of financial recovery (48%)”.

Given the legislative framework pertaining to the reporting of instances where the State has suffered losses or damages through criminal conduct as comprehensively discussed in paragraph 3.9, failure on the part of an Accounting Officer to report such cases is in contravention of the Treasury Regulations.

4.10 RATE OF RECOVERY OF DEBT

In terms of section 38(c)(i) of the PFMA³¹ read in conjunction with Treasury Regulation Part 5, paragraph 12.5.1³² the Accounting Officer is required to take effective steps to collect all monies due to the department. The PSC therefore requested departments to indicate whether the amounts involved in the financial misconduct were recovered.

Figure 35 below shows the percentage of the amounts recovered by departments versus the amounts not recovered over the past four financial years.

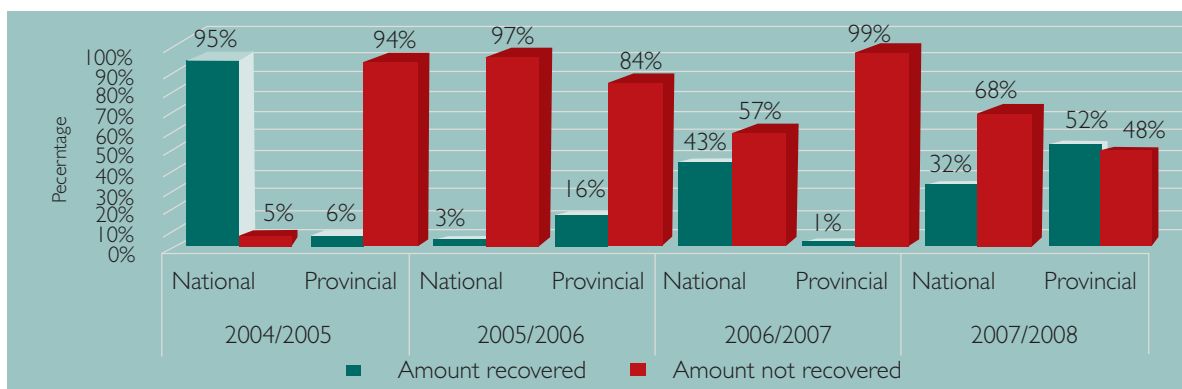


Figure 35: Percentage of the amounts recovered by departments vs the amounts not recovered over the past three financial years

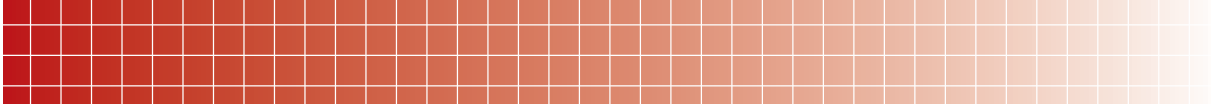
In **Figure 35** the percentage of recovery of the value of the loss and damage as a result of financial misconduct in the Public Service is compared to the percentage not recovered over the last four financial years (2004/2005 and 2007/2008). There has been an increase in the overall rate of recovery from the 2006/2007 financial year to the 2007/2008 financial year from 22% to 40%. This figure is well below the overall recovery rate in the 2004/2005 financial year which was at 50%.

However, it should be borne in mind that the above-mentioned figures in actual fact provide a distorted view of the actual rate of recovery as a result of the fact that at the time that departments are required to report to the PSC on the outcome of the disciplinary process, the recovery of the value of the loss or damage has not necessarily taken place. Of importance therefore, is that departments accelerate the rate of recovery to show

³⁰ Africa Fraud and Misconduct Survey 2005, KPMG (www.kpmg.co.za/images/naled1).

³¹ Republic of South Africa. The Public Finance Management Act 1 of 1999.

³² Republic of South Africa. Treasury Regulations, 2002 published in Government Gazette No. 23463 dated 25 May 2002.



their commitment to service delivery and that they take effective and appropriate steps to collect all monies due to the department.

In an attempt to provide a more comprehensive analysis on the actual loss to the State as a result of financial misconduct, the PSC has requested departments in the 2007/2008 financial year to provide an update on the rate of recovery in respect of cases reported during the 2006/2007 financial year. In this regard, it was reported in the 2006/2007 financial year that the total cost reported by national and provincial departments emanating from cases of financial misconduct relating to unauthorised, irregular, fruitless, wasteful expenditure and losses resulting from criminal conduct was **R 130 615 994.82** and only an amount of **R 20 838 681.74** (16% of the total cost) was recovered from the employees found guilty of financial misconduct or the financial misconduct did not result in any loss to the State (e.g. a fraudulent Subsistence and Travel claim is not paid). Departments did not have this information readily available and only reported that an additional amount of **R 6 133 516.62** (a further 5%) had been recovered. Clearly this is an area which needs urgent attention from departments and in later years a trend line will emerge on this aspect.

Chapter Five

Data Verification

5.1 INTRODUCTION

The PSC is dependent on the information provided by departments in order to report on financial misconduct in the Public Service. Thus the lack of proper reporting impacts on the quality of the PSC's report.

Due to the recurrent non-compliance with the reporting format and/or the submission of inaccurate and incomplete reports in respect of the 2006/2007 financial year, the methodology of the project on financial misconduct for the 2007/2008 included the verification of information provided. The verification of information provided was conducted during data verification visits which PSC officials undertook. Whilst these data verification visits are an important aspect of the methodology adopted in compiling this report, they are not dealt with in detail under the chapter that deals with the methodology. This was a conscious decision made, since it went beyond mere methodology, and to a degree included *in loco* "training" of officials. Thus, this chapter provides a detailed discussion on the findings and observations made during the data verification visits.

The data verification was conducted in order to improve data integrity and at the same time provide guidance to those officials responsible for the completion of the PSC's reporting format on the financial misconduct cases. In this regard, data verification was conducted at the following selected departments, which the PSC visited:

- Departments of Education, Eastern Cape, Western Cape and Mpumalanga
- Departments of Health, Gauteng, Western Cape and Mpumalanga
- Department of Transport, Roads and Works, Gauteng
- Department of Transport, KwaZulu-Natal
- Department of Justice and Constitutional Development
- Department of Labour
- Department of Land Affairs
- The South African Police Services



5.2 DATA VERIFICATION PROCESS

During the data verification visits information reflected in the reports submitted by the above-mentioned departments to the PSC were to be verified against the database of all misconduct cases maintained by the relevant department, PERSAL, staff personal (SP) files, as well as against the relevant departments' annual reports.

5.3 CHALLENGES FACED BY DEPARTMENTS IN THE COLLATION OF DATA ON FINANCIAL MISCONDUCT

During the data verification visits to the above-mentioned departments it was found that common challenges existed. These challenges will be discussed below.

5.3.1 Understanding of what constitutes financial misconduct

Individuals tasked with the responsibility of completing the format to report finalised financial misconduct cases to the PSC indicated that they have great difficulty in determining what constitutes financial misconduct.

In terms of section 85(1) of the PFMA³³, read with Chapter 4 of the Treasury Regulations³⁴, all public service departments must, as soon as the disciplinary proceedings in cases of financial misconduct are finalised, report to the PSC on the outcome of the cases. However, these prescripts do not provide a definition of what constitutes financial misconduct.

Despite the fact that the PSC's reports on financial misconduct have over the years included the "types of financial misconduct", it appears that there is no common understanding by departments as to what constitutes financial misconduct.

³³ Republic of South Africa. The Public Finance Management Act 1 of 1999.

³⁴ Republic of South Africa. Treasury Regulations, 2002 published in Government Gazette No 23463 dated 25 May 2002.

5.3.2 Challenges in Database Management

Various departments did not have a database against which the information provided to the PSC could be verified. It was found that in many instances, information was only collated by departments when requested by the PSC. It would therefore appear that the Accounting Officers are not necessarily informed of the outcome of cases as required in the PFMA, based on the following:

- The Department of Transport in the KwaZulu-Natal Province did not have any database. However, they indicated that the Department is in the process of developing a database of misconduct cases.
- The Department of Health; Mpumalanga Province and the SAPS did not have a centralised database of misconduct cases against which the information provided to the PSC could be verified. These two departments rely on their district and/or regional offices and centralised sections to submit monthly updates, which they maintain for record purposes. However, the SAPS has developed an EXCEL database with comprehensive details of the misconduct cases and will be utilising this database to record cases for the 2008/2009 financial year.
- Where databases did exist, instances were found where the information captured on the databases was incomplete.

As a result of deficiencies, the PSC could not verify the following information:

- The exact nature of the misconduct i.e. whether it is related to financial misconduct
- The status of the case
- The date the case was finalised
- Whether there has been an appeal in respect of the findings and sanction/s imposed
- The status with regards to the appeal
- Was there criminal action taken against the employee
- The gender of the employee
- Whether the monies lost have subsequently been recovered or not
- Whether there has been an actual or potential loss to the state

Inaccurate reporting impacts on the usefulness of the financial misconduct report as a tool for risk identification and risk assessment. In addition, inaccurate reporting impacts on the quality of analysis, and the ability to identify trends relating to financial misconduct within the Public Service.

5.3.3 Determining of the date of finalisation of a financial misconduct case

In terms of section 85(1) of the PFMA³⁵, read with Chapter 4 of the Treasury Regulations³⁶, all public service departments must, as soon as the disciplinary proceedings in cases of financial misconduct are finalised, report to the PSC on the outcome of the cases. These prescripts are not clear as to when a case is regarded as finalised.

During data verification it was found that there is no common understanding as to when the case should be considered as being finalised. In some instances departments considered the date of finalisation of the case to be the date once all internal administrative processes have been completed and the file is signed off by the Labour Relations Officer.

As disciplinary proceedings are an internal departmental process, the case is to be considered as finalised on the date the sanction is imposed. Should the official lodge an appeal regarding the matter, then the date of finalisation should be the date on which the official is informed of the outcome of the appeal. The date on which a case is finalised is imperative to determine in which financial year the case should be reported to the PSC, and departments need to interpret this correctly.

³⁵ Republic of South Africa. The Public Finance Management Act 1 of 1999.

³⁶ Republic of South Africa. Treasury Regulations, 2002 published in Government Gazette No 23463 dated 25 May 2002.

5.3.4 Rate of recovery of debt

In terms of section 38(c)(i) of the PFMA³⁷ read in conjunction with Treasury Regulation Part 5, paragraph 12.5.1 the Accounting Officer is required to take effective steps to collect all monies due to the department. The PSC therefore requested departments to indicate whether the amounts involved in the financial misconduct were recovered.

The format for reporting of financial misconduct cases to the PSC provides for departments to report on the "Recovery of loss". This is to enable the PSC to include in its report the amount recovered in respect of financial misconduct cases that were finalised during a relevant financial year. In some instances departments did not complete this field, thus it distorts the amount stated as "Rate of recovery" in the PSC's report. The actual amount recovered in respect of financial misconduct for a specific financial year could be more than that stated in the report submitted to the PSC.

During data verification with the relevant departmental representatives, it was established that the report on finalised financial misconduct cases that is submitted to the PSC is usually completed by an official from the Labour Relations Component. However, there is a segregation of functions in dealing with the misconduct cases. The disciplinary process is dealt with by the Labour Relations Component and on finalisation the relevant section such as the Debt Control Section, Loss Control Section, or the Finance Section is advised to recover the debt. It appears that the segregation of functions hampers the accurate completion of the report submitted to the PSC.

5.3.5 Record keeping and the maintenance of files

It is the responsibility of each department to ensure that an accurate record of disciplinary action is maintained. As matters of disciplinary action are sensitive in nature, and may in some instances lead to legal action being taken, it is imperative that all documentation relating to a specific case is properly maintained, either in the employees personal or misconduct file.

Data verification by the PSC revealed that although departments maintain separate files in respect of disciplinary action taken, in most instances where files were verified, the information in the files was not accurately maintained, documents were left loose in the file, and were not filed according to the sequence of events.

A misconduct file should at the very least have the following documentation on record and should be filed in accordance with the sequence of events:

- Initial report of misconduct to the Labour Relations Directorate/Section
- Letter of appointment of the investigating officer/s, if applicable
- Investigation report
- Charges proffered against the employee
- Notice to appear at a disciplinary hearing
- Minutes of the disciplinary enquiry indicating the findings
- Sanctions imposed and the acknowledgement thereof
- Notice of appeal
- Outcome of appeal
- Any other documentation relevant to the misconduct, such as disputes, arbitration etc.

On perusal of some of the files, it was found that in instances where a written warning and or a final written warning was issued to the employee, no supporting documentation was on record in the misconduct files. Departments ascribed this to the fact that the Disciplinary Code and Procedures for the Public Service prescribes that a written warning and a final written warning remains valid for six months and at the expiry of the six months,

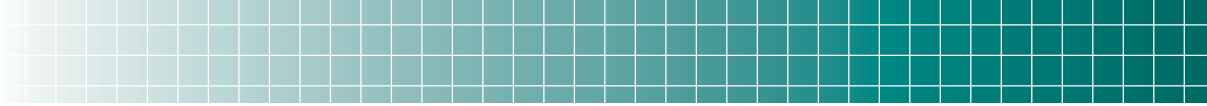
³⁷ Republic of South Africa. The Public Finance Management Act 1 of 1999.

the warning must be removed from the employee's personal file and destroyed. As the process of maintaining records in respect of a written warning and final written warning is prescribed, departments should ensure that prior to the records being destroyed at the end of the prescribed period, proper details of the case should be captured in the departmental misconduct database. This will enable the relevant stakeholders to verify information when the need arises. Furthermore, it will also assist departments in providing statistics to the relevant stakeholders as and when required.

The DPSA circular 4 of 2001³⁸, which deals with the National Minimum Information Requirements (NMIR), stipulates that although departments manage information through several means which includes personal files, the PERSAL system, financial systems and other supplementary systems, where applicable, PERSAL or the personnel files must be used in order to comply with the NMIR. The circular stipulates the following with regards to the NMIR in so far as it relates to disciplinary matters:

E. DISCIPLINARY MATTERS (FOR ALL CASES AFTER 1 JANUARY 2001 AS WELL AS ALL PENDING CASES WHICH BEGAN AFTER 1 JULY 1999 IN TERMS OF PSCBC RESOLUTION 2 OF 1999)		
Variables		Notes
Source Systems		
MISCONDUCT (functionality to be available on PERSAL in January 2001)		
Type of Offence		Both
Start date - proceedings		Both
End date - proceedings		Both
Status of case	Options include: In process, Finalised, Withdrawn	Both
If a case is finalised:-		
Outcome	Two options:- guilty, not guilty	Both
Sanction	If the outcome is guilty	Both
If the case is withdrawn:-		
Reason for withdrawal of case		Both
APPEALS (functionality to be available on PERSAL in January 2001)		
Date of Appeal		Both
Date of finalisation of appeal		Both
Nature of Appeal		Both
Outcome of Appeal		Both
DISPUTES ARISING AFTER AN APPEAL (functionality to be available on PERSAL in January 2001)		
Date of dispute		Both
Date of finalising a dispute		Both
Nature of dispute		Both
Method of resolution	Two options:- conciliation, arbitration	Both
If the method of resolution was arbitration		
Outcome	Two options:- sanction upheld, sanction modified	Both
New sanction	If the original sanction was modified	Both
SUSPENSIONS		
Type of Suspension		Both
Start date		Both
End Date		Both
Nature of Offence	Functionality to be available on PERSAL in January 2001. Information to be available in Personnel File.	Both

³⁸ Republic of South Africa : The Department of Public Service and Administration. Circular 4 of 2001, National Minimum Information Requirements. 2001.



During the Data Verification visits departments indicated that they do not capture the details or outcome of disciplinary action onto the PERSAL system. The reasons advanced for the failure to capture the relevant details varied, but related mainly to the complexity of the system, inadequate staffing, lack of access to the PERSAL system (by the Labour Relations Directorate/Section) and that employees were not trained to capture information onto the PERSAL system. In this regard, the following departments confirmed that they do not capture details of disciplinary action on PERSAL:

- Department of Transport: KwaZulu-Natal
- Department of Education: Mpumalanga
- Department of Health: Mpumalanga
- Department of Health: Gauteng
- Department of Transport: Gauteng
- Department of Labour
- Department of Justice and Constitutional Development

Inaccurate and incomplete document keeping presents a major set-back in the successful completion of PSC projects, including public administration investigations and is also a major indictment on department's ability to exercise sound management and administrative practice.

Chapter Six

Recommendations and Conclusion



6.1 INTRODUCTION

Financial misconduct is a serious threat on the limited government resources, and seriously compromises service delivery needs. While a sound regulatory framework has been established to assist Accounting Officers and other officials to manage state funds, the PSC believes it is imperative that the application of this framework must be strengthened. To this end, it offers recommendations that it believes will assist departments.

6.2 DEFINE FINANCIAL MISCONDUCT

During interactions with officials from various departments, it became apparent that departments are experiencing challenges in defining and understanding what financial misconduct entails. Furthermore, the relevant prescripts that deal with financial misconduct within the Public Service namely, the PFMA and the Treasury Regulations, do not provide for a definition. In order to address this problem, and to promote a uniform understanding of what financial misconduct entails, the PSC will facilitate that a definition be finalised and provided to departments as a guideline.

In the interim, the PSC recommends that the types of financial misconduct as defined in this report (refer to Table 3 in paragraph 3.3) be utilised as a guideline by departments to report finalised financial misconduct cases to the PSC once a case is finalised. This will ensure that there is a common approach throughout the Public Service as to what constitutes financial misconduct.

6.3 IMPROVING INVESTIGATIVE CAPACITY

The Public Service, like all other employers is vulnerable to fraud, corruption and other criminal behaviour in the administration of public funds. It is therefore imperative that departments have adequate strategies and resources to deal with this risk appropriately. Departments should build capacity and dedicate resources to investigate allegations of fraud and corruption, and to respond to complaints promptly and effectively. In this regard, the inappropriate handling of financial misconduct cases may lead to instances where appropriate action is not taken against the perpetrator or the employee may leave a department prior to the finalisation of the disciplinary case. Departments have the responsibility to create a minimum capability to deal with fraud and corruption, and urgent attention must be given to this.

6.4 STRENGTHENING IMPLEMENTATION OF FRAUD PREVENTION PLANS AND RISK ASSESSMENT

A critical aspect of financial management is to have a fraud prevention plan that is based on a thorough risk assessment. Fraudsters and other criminals are resourceful and unrelenting in finding and exploiting weaknesses in internal controls. They are adept at covering their tracks and in creating confusion and uncertainty in the minds of those trying to work out what has happened. A high level of awareness in the organisation is necessary if departments are to reduce financial risks. In this regard, the PSC recommends ongoing risk assessment that is supported by a high level of awareness.

With regard to the poorly managed misconduct databases, the PSC recommends that departments should have a systematic tracking system of financial misconduct cases. This forms an integral part of an effective risk management strategy and should feed into the fraud prevention and risk assessment processes of departments. This will enable departments to identify trends or risks associated with financial misconduct.

6.5 RECOVERY OF DEBT

As misconduct cases are dealt with by the Labour Relations Directorate, and the recovery of monies are dealt with by sections such as the Debt Control, Finance, and Loss Control sections within departments, the PSC recommends that departments should establish processes whereby there is liaison between the relevant sections.



This will assist the recovery of money lost by the State as a result of financial misconduct and will also assist in the accurate reporting to the PSC.

Departments must ensure that debts are recovered in accordance with the relevant legislation governing the recovery of monies owing to the State. Monies owing to the State that are not recovered timeously will impact on the department's budget and eventually have a negative impact on service delivery.

6.6 IMPROVED REPORTING ON THE RECOVERY OF DEBT

The inputs received from departments in relation to the recovery of losses relating to financial misconduct were found to be inadequate. Furthermore, observations made during the data verification visits in relation to the recovery of debt indicated similar challenges. The PSC recommends that departments must follow-up on payments made by employees during the recovery of losses resulting from financial misconduct. Furthermore, departments should ensure that monies collected in respect of financial misconduct are reported in the relevant financial year to the PSC.

6.7 ESTABLISHING DEPARTMENTAL DATABASES ON FINANCIAL MISCONDUCT

Good recordkeeping is a necessary element of good governance. It supports efficiency and accountability through the creation, management and retention of meaningful, accurate, reliable, accessible and durable records of important government activities and decisions. Retaining the corporate memory of government, in the form of records, helps public servants perform their duties efficiently, effectively and ethically, and ensures that audit trails are maintained for public accountability and transparency.

In order to ensure data integrity, departments should maintain a database of misconduct cases in an Excel format. The following information should be contained in the database in order to enable the department to accurately complete the format provided by the PSC to report finalised financial misconduct cases:

- (a) Initial/s of employee
- (b) Surname of employee
- (c) PERSAL number
- (d) Rank
- (e) Salary level
- (f) Gender (Male/Female)
- (g) Brief Description of the nature of misconduct
- (h) Date the case was reported to the Labour Relations Directorate/Section
- (i) Date disciplinary hearing was conducted
- (j) Charges
- (k) Findings/outcome of the disciplinary enquiry
- (l) Date the sanction was imposed
- (m) Criminally charged (Yes/No)
- (n) Reasons not criminally charged
- (o) Outcome of the criminal charges
- (p) Amount involved
- (q) Amount recovered
- (r) Reasons for no recovery
- (s) Actual or potential loss to State
- (t) Comment/s



6.8 DEFINE WHEN A CASE IS FINALISED

Over the past two financial years the PSC has raised a concern that some departments reported the same cases of financial misconduct in more than one financial year. Thus, a case involving the same employee, committing the same offence, would be reported two years in a row. During consultations with departments it came to the fore that they interpreted the finalisation of cases in different ways, e.g. some only reported on cases when the recovery has been completed, while others reported cases once the sanction has been pronounced.

Departments should consider a misconduct case as finalised once the internal departmental disciplinary process has been completed and the sanction is imposed. However, employees may appeal the sanction imposed, and in such instances the case will only be regarded as finalised once the outcome of the appeal is pronounced.

6.9 REQUEST FOR ASSISTANCE FROM THE PSC

In line with its stakeholder outreach strategy, the PSC held a successful Round-Table Discussion with representatives from national and provincial departments on the Overview of Financial Misconduct for the 2006/2007 Financial Year in February 2008. Following this event and the PSC's data verification visits, various departments requested the PSC to render advice on the handling of financial misconduct cases, as well as the maintenance of an accurate database.

Considering the above, and the challenges encountered by departments in reporting financial misconduct, departments are encouraged to approach the PSC for assistance when they experience difficulties in the reporting of financial misconduct. The PSC is willing to provide the necessary support to departments that require assistance in building internal capacity to deal with financial misconduct and the reporting thereof.

6.10 CONCLUSION

The Public Service is accountable to its citizenry on the use of public funds. When large amounts of public funds are squandered by untrustworthy public servants, it impacts on the image of the Public Service and the trust relationship between government and the citizens.

Given the fact that Public Service managers operate in a complex environment, they should ensure that they are knowledgeable of the legislation, internal policies and procedures relating to their sphere of work. This will enable managers to detect potential fraud and/or any other form of financial misconduct timeously and take corrective action.

Although disciplinary action is considered to be a corrective measure, managers should ensure that when an employee is found guilty of financial misconduct, prompt action is taken against the said employee. This in fact would serve as a deterrent, and should discourage other employees from engaging in similar misdemeanours.

The analysis contained in this report provides comprehensive detail on the level of financial misconduct during the 2007/2008 financial year and should provide valuable information for oversight purposes as well as to address trends emerging.

FORMAT FOR REPORTING ON FINANCIAL MISCONDUCT							Annexure A		
NAME OF DEPARTMENT:				NAME OF PROVINCE (if applicable):					
NAME AND CONTACT DETAILS OF EMPLOYEE RESPONSIBLE FOR COMPLETION OF REPORT:									
NAME	RANK	GENDER M/F	SALARY LEVEL ¹	CHARGES PROFFERED AGAINST EMPLOYEE ²	FINDINGS OF DISCIPLINARY ENQUIRY	SANCTION IMPOSED ³	FURTHER ACTION TAKEN AGAINST EMPLOYEE ⁴	AMOUNT INVOLVED	RECOVERY OF LOSS ⁵
Example: Smit R	Accounting Clerk	M	5	Theft of paper to the value of R5000.00	Guilty/Not guilty/ Case withdrawn	Dismissal/ Final written warning	Criminal action was instituted against the employee on 24 May 2005.	R5000.00	The amount of R5 000.00 deducted from the pension benefits owed to the employee.
Notes:									
1 If the employee is a member of the Senior Management Service, please provide a copy of his/her job description.									
2 Provide detail in regard to the specific charges proffered against each employee.									
3 Refer to the sanctions provided for in the Disciplinary Code and Procedures.									
4 In terms of subsection 34(1) of the Prevention and Combating of Corrupt Activities Act, 2004, any person who holds a “position of authority” is compelled to report offences of theft, fraud, extortion, forgery or uttering of a forged document involving amounts of R100 000.00 or more to the South African Police Service. Please ensure that if no criminal action was taken against an employee that committed financial misconduct, the reasons for such a decision should be provided.									
5 If the loss ascribed to financial misconduct was not recovered, indicate the reasons for the decision.									
Questions:									
[a] What are the reasons for the increase/decrease in financial misconduct cases reported during the 2007/2008 financial year compared to the 2006/2007 financial year?									
[b] If there is a trend of financial misconduct cases on a particular salary level, indicate the possible reasons for this trend.									

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[illegible]

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