

Public Service Commission



Overview on Financial Misconduct for the 2006/2007 financial year

Published in the Republic of South Africa by:

THE PUBLIC SERVICE COMMISSION (PSC)
Commission House
cnr. Hamilton & Ziervogel Streets
Pretoria, 0083

Private Bag X121
Pretoria, 0001

Tel: (012) 352 1000
Fax: (012) 325 8382

Website: www.psc.gov.za

National Anti-Corruption Hotline Number: 0800 701 701 (Toll-Free)

Compiled by Branch: Investigations and Human Resource Reviews

Distributed by Directorate: Communication and Information Services

RP: 05/2008

ISBN: 978-0-621-37591-6



Foreword by the Chairperson of the Public Service Commission

It gives me great pleasure to present to you the Public Service Commission's (PSC) Overview on Financial Misconduct for the 2006/2007 financial year. The overview is published bi-ennially and provides a statistical overview and brief trends analysis of financial misconduct cases reported to the PSC by national and provincial departments for the financial year 2006/2007. This overview does not provide the same level of analysis as contained in the comprehensive reports on Financial Misconduct published by the PSC every other year. The PSC will again publish a comprehensive report on financial misconduct for the 2007/08 financial year.



In terms of the provisions of the Public Finance Management Act, 1999¹, read with the Treasury Regulations, departments are compelled to report on finalised financial misconduct cases to, amongst others, the PSC. In compliance with its mandate, the PSC has been reporting on financial misconduct since the 2001/2002 financial year on an annual basis. Since then the issue of financial misconduct within the Public Service has come into the domain of public discussion. The keen and constructive interest shown in the PSC's report by Parliament and some provincial legislatures is an indication that the representatives of the people are concerned about the impact of financial misconduct on service delivery. Government's expectation is that departments take stringent measures to obviate the unlawful loss of financial resources.

In 2004 the South African Government was mandated to halve poverty and unemployment by the year 2014². However, the increase in the number of financial misconduct cases in the 2006/2007 financial year, as well as the cost of financial misconduct could possibly hinder government's ability to meet this strategic objective. Also, financial misconduct by Public Service employees does not only prejudice government but also its citizens. It impacts on government's ability to fight poverty, damages social values, undermines democracy and good governance. It particularly impacts on the financial resources available for the attainment of a better life for all citizens of the country. This link is evident given that a large percentage of the cases reported for the 2006/2007 financial year involves social grant fraud committed by public servants.

A handwritten signature in black ink, appearing to read 'Sangweni', with a stylized flourish at the end.

PROF SS SANGWENI
CHAIRPERSON: Public Service Commission

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

² Republic of South Africa. Accelerated and Shared Growth Initiative for South Africa (AsgiSA)



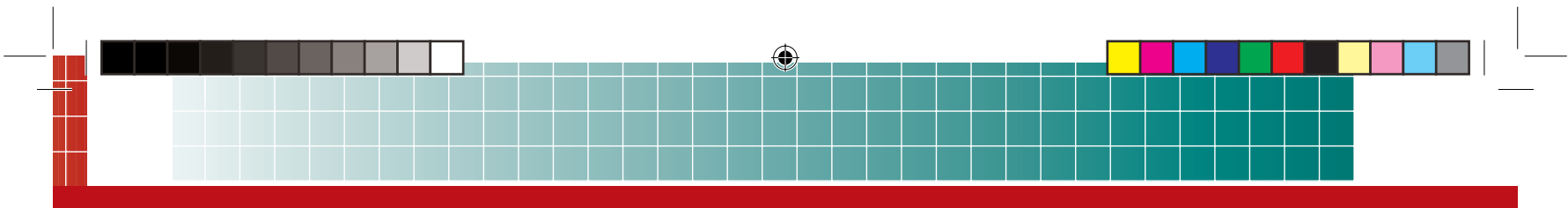
Table of Contents

Executive Summary	v
1. Introduction.....	1
2. Methodology	3
2.1 Responses from National and Provincial Departments.....	4
2.2 Limitations experienced.....	9
3. Statistical Overview.....	10
3.1 Introduction.....	11
3.2 The number of employees charged with financial misconduct.....	11
3.3 Types of financial misconduct reported.....	15
3.4 Levels of employees charged with financial misconduct.....	17
3.5 Gender of employees charged with financial misconduct.....	19
3.6 Outcome of financial misconduct cases.....	20
3.7 Sanctions imposed in cases of financial misconduct.....	21
3.8 Cost of Financial Misconduct	22
3.9 Criminal Proceedings instituted against employees charged with financial misconduct.....	27
4. Trend Analysis of Cases Reported since the 2001/2002 Financial Year.....	30
4.1 Increase in financial misconduct cases.....	31
4.2 Increase in cases in the categories “fraud” and “theft”	33
4.3 High percentage of SMS members charged with financial misconduct.....	34
4.4 Increase in financial misconduct cases in respect of females.....	35
4.5 Increase in cases withdrawn and employees found not guilty.....	36
4.6 Decline in discharge from the Public Service as an appropriate sanction.....	37
4.7 Increase in the cost of financial misconduct.....	39
4.8 Lack of information on criminal proceedings undertaken in cases of financial misconduct.....	40
4.9 Rate of recovery of debt.....	41
4.10 Timeliness, accuracy and credibility of information	42
5. Conclusion	43
Annexure A	45



Glossary of Terms

Constitution, 1996	Constitution of the Republic of South Africa, 1996
Dti	Department of Trade and Industry
DOJCD	Department of Justice and Constitutional Development
DPSA	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, 2004
PSC	Public Service Commission
SAPS	South African Police Service
SIU	Special Investigative Unit
SMS	Senior Management Service



EXECUTIVE SUMMARY

1. INTRODUCTION

The PSC has decided to issue a comprehensive Report on Financial Misconduct on a biennial basis. Its objective in the Overview on Financial Misconduct for the 2006/2007 financial year (1 April 2006 to 31 March 2007) is, therefore, to provide its stakeholders with a statistical overview and brief analysis of the information provided by national and provincial departments on finalized financial misconduct cases reported to the PSC for the financial year. This overview adds to the previous reports on financial misconduct published by the PSC and also enables the PSC to draw a comparison with the information financial misconduct reported to the PSC since the 2001/2002 financial year.

All national and provincial departments submitted a report for the 2006/2007 financial year. If no financial misconduct cases were finalised by a particular department, a nil return had to be submitted to the PSC for record purposes. Of the 35 national departments, 14 departments indicated that they had no financial misconduct cases for the financial year and of the 107 provincial departments, 47 departments indicated that they had no financial misconduct cases for the financial year.

2. STATISTICAL OVERVIEW

2.1 THE NUMBER OF EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

A total of **1042** cases of financial misconduct were reported for the 2006/2007 financial year, of which **370** cases were reported by national departments and **672** cases were reported by provincial departments. This represents a substantial increase from the 771 cases reported in the previous financial year (2005/2006).

2.2 TYPES OF FINANCIAL MISCONDUCT REPORTED

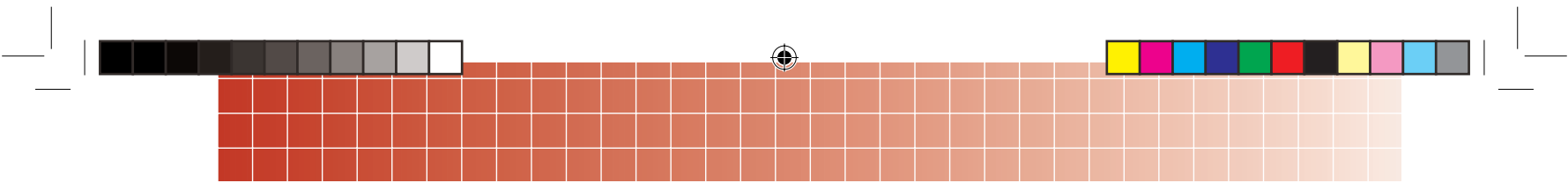
In terms of the Public Finance Management Act (PFMA), 1999³, financial misconduct entails any material losses through criminal conduct, unauthorized, irregular, fruitless and wasteful expenditure. Departments reported various types of financial misconduct committed by employees. Cases in the category “fraud” comprise a significant portion (59%) of the overall number of cases reported. Furthermore, cases in the category “theft” comprise the second highest number of cases (13.1%). This trend is in keeping with previous financial years, during which cases in the category “fraud & theft” comprised 64.7% of the overall number of cases reported.

2.3 LEVELS OF EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

The figure 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. The largest number of financial misconduct cases was encountered at salary levels 1 to 8. A comparison of the percentage of the total number of employees at the SMS level (0.8%) and the percentage of the total number of finalized financial misconduct cases in respect of SMS members (1.6%) for the 2006/2007 financial year points to the fact that employees in the SMS are more prone to committing financial misconduct.

³ Republic of South Africa. The Public Finance Management Act. Act 1 of 1999.





2.4 GENDER OF EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

Of the 1042 cases reported, departments did not indicate the gender in 10% of the cases. Of the remaining 90% of reported cases, financial misconduct was committed by males in 35% of the cases, and by females in 55% of the cases.

2.5 OUTCOME OF FINANCIAL MISCONDUCT CASES

Of the 1042 finalised financial misconduct cases reported, 83% of employees were found guilty. This is the highest percentage of employees found guilty following charges of financial misconduct over the past five financial years (since the 2002/2003 financial year).

2.6 SANCTIONS IMPOSED IN CASES OF FINANCIAL MISCONDUCT

Final written warnings (36%) were the most prevalent sanctions imposed upon a finding of guilty, followed by a combination of sanctions (21%). Discharge as a sanction was imposed in 158 (18%) of the instances where employees were found guilty following charges of misconduct.

2.7 COST OF FINANCIAL MISCONDUCT

The total cost reported by national and provincial departments emanating from unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct for the 2006/07 financial year was **R130,615,994.82**. During the same period, 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 Subsistence and Travel claim is not paid). Although 16% seems low, it should be taken into consideration that departments have to report to the PSC on the outcome of the disciplinary case. Upon finalization of the disciplinary process, the recovery of the value of the loss or damage has not necessarily taken place.

2.8 CRIMINAL PROCEEDINGS INSTITUTED AGAINST EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

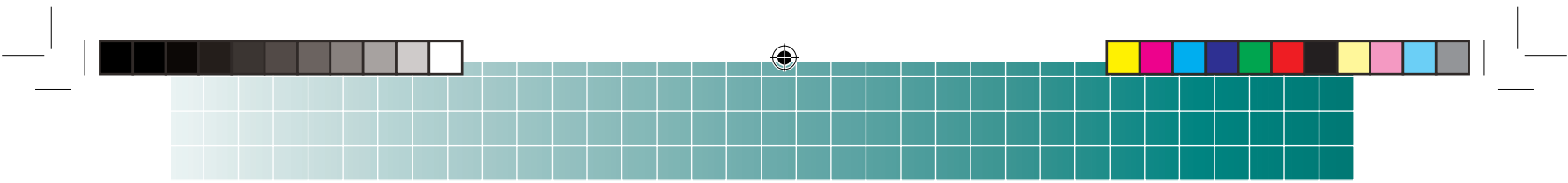
Criminal proceedings were instituted against employees in 25% (257) of the cases. In 22% (228) of the finalised cases no criminal proceedings were instituted against employees.

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

3.1 INCREASE IN FINANCIAL MISCONDUCT CASES

There has been a significant increase (35%) in the number of cases reported to the PSC for the 2006/2007 financial year in comparison to the previous financial years. National departments (15%), Gauteng (817%), Kwa-Zulu-Natal (146%), North West (4.3%) and Western Cape (299%) provinces had an increase in cases in the 2006/07 financial year.





3.2 INCREASE IN CASES IN THE CATEGORIES “FRAUD” AND “THEFT”

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, with cases in the category “misappropriation and abuse”, being the second highest. Although there had been a decline in fraud and theft cases during the 2004/2005 to 2005/2006 financial years, the trend of the previous year (2001/2002) has again emerged in the 2006/2007 financial year whereby fraud and theft cases comprise more than 70% of the overall number of cases reported.

3.3 HIGH PERCENTAGE OF SMS MEMBERS CHARGED WITH FINANCIAL MISCONDUCT

The distribution of finalized 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. Although there has been an improvement in the percentage of cases reported in respect of SMS members from the 2005/2006 (2.5%) to the 2006/2007 (1.6%) financial years, of concern to the PSC is that this is above the percentage of SMS members on salary levels 13 to 15 (0.8%).

3.4 INCREASE IN FINANCIAL MISCONDUCT CASES IN RESPECT OF FEMALES

The gender distribution of employees in respect of financial misconduct cases differs substantially from the previous financial year. In the 2005/06 financial year more males (52%) than females (40%) committed financial misconduct, whereas in the 2006/07 financial year, more females (55%) than males (35%) committed financial misconduct. It was interesting to note that the social grant fraud cases had a significant impact on the increase in females being found guilty of financial misconduct.

3.5 INCREASE IN CASES WITHDRAWN AND EMPLOYEES FOUND NOT GUILTY

A trend emerged during the 2006/2007 financial year during which a substantial number of cases were withdrawn (7%), or the employees were found not guilty (4%). This could possibly be ascribed to a lack of expertise on the part of departments to deal with allegations of financial misconduct effectively.

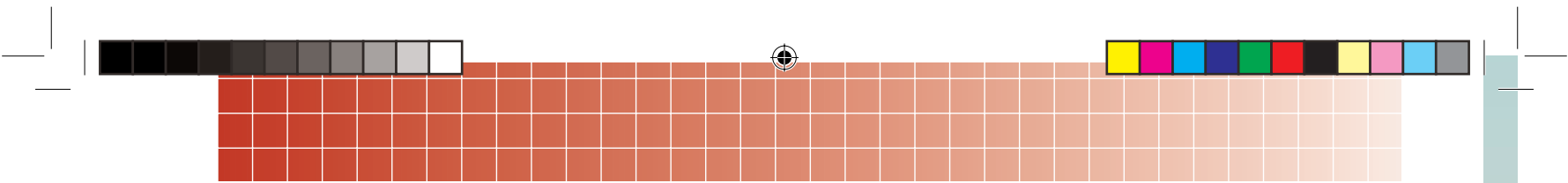
3.6 DECLINE IN DISCHARGE FROM THE PUBLIC SERVICE AS AN APPROPRIATE SANCTION

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%), followed by a combination of sanctions (21%). The decline in the prevalence of discharge from the Public Service as a sanction in response to a finding of guilty on financial misconduct could create the perception with the public that government is more tolerant towards employees who commit financial misconduct. However, it should be taken into consideration that after considering the mitigating and aggravating circumstances of each case, all acts of financial misconduct would not necessarily render the employment relationship as intolerable, resulting in discharge.

3.7 INCREASE IN THE COST OF FINANCIAL MISCONDUCT

There has been a significant increase (186%) in the cost of financial misconduct from the 2005/2006 to the 2006/2007 financial year. This increase is largely ascribed to two cases involving very large amounts, namely the





cases involving R16 million in the National Department of Agriculture and R60 million in the Department of Roads and Public Transport in Limpopo Province. The latter two cases comprise 58% of the total cost of financial misconduct for the 2006/2007 financial year.

3.8 LACK OF INFORMATION ON CRIMINAL PROCEEDINGS UNDERTAKEN IN CASES OF FINANCIAL MISCONDUCT

Similar to the 2005/2006 financial year, criminal proceedings were instituted in 25% of the finalized financial misconduct cases reported in the 2006/2007 financial year. Overall since the 2002/2003 financial year, the ratio of cases in which departments instituted criminal action (31%), as compared to the total number of cases is relatively low. It should, however, 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.

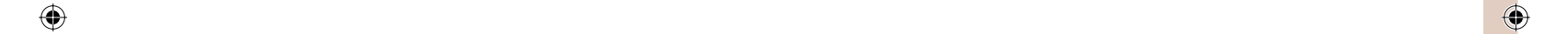
3.9 TIMELINESS, ACCURACY AND CREDIBILITY OF INFORMATION

Although the increase in the number of departments reporting to the PSC may point to greater accountability, the vigorous follow-up required by the PSC to elicit responses from departments and the poor quality/inaccuracy of information provided places a question mark on the seriousness with which departments regard the reporting requirements stipulated in the PFMA and Treasury Regulations. Furthermore, merely providing the PSC with information is no longer enough. Accounting Officers should take responsibility to ensure the timeliness, accuracy and credibility of information being provided to the PSC.

4. CONCLUSION

This Overview shows worrying new trends in financial misconduct emerging within the Public Service, such as the increase in financial misconduct cases, increase in the categories “fraud” and “theft”, high ratio of SMS members charged with financial misconduct in comparison to the total number of employees in the Public Service and increase in the cost of financial misconduct. The increase in the number of cases could possibly be attributed to the provision of mechanisms to blow the whistle on corrupt and unlawful activities and the efforts of government to deal with such cases. However, the Public Service should not take too much comfort in the latter interpretation if it is to keep its “eye on the ball”.

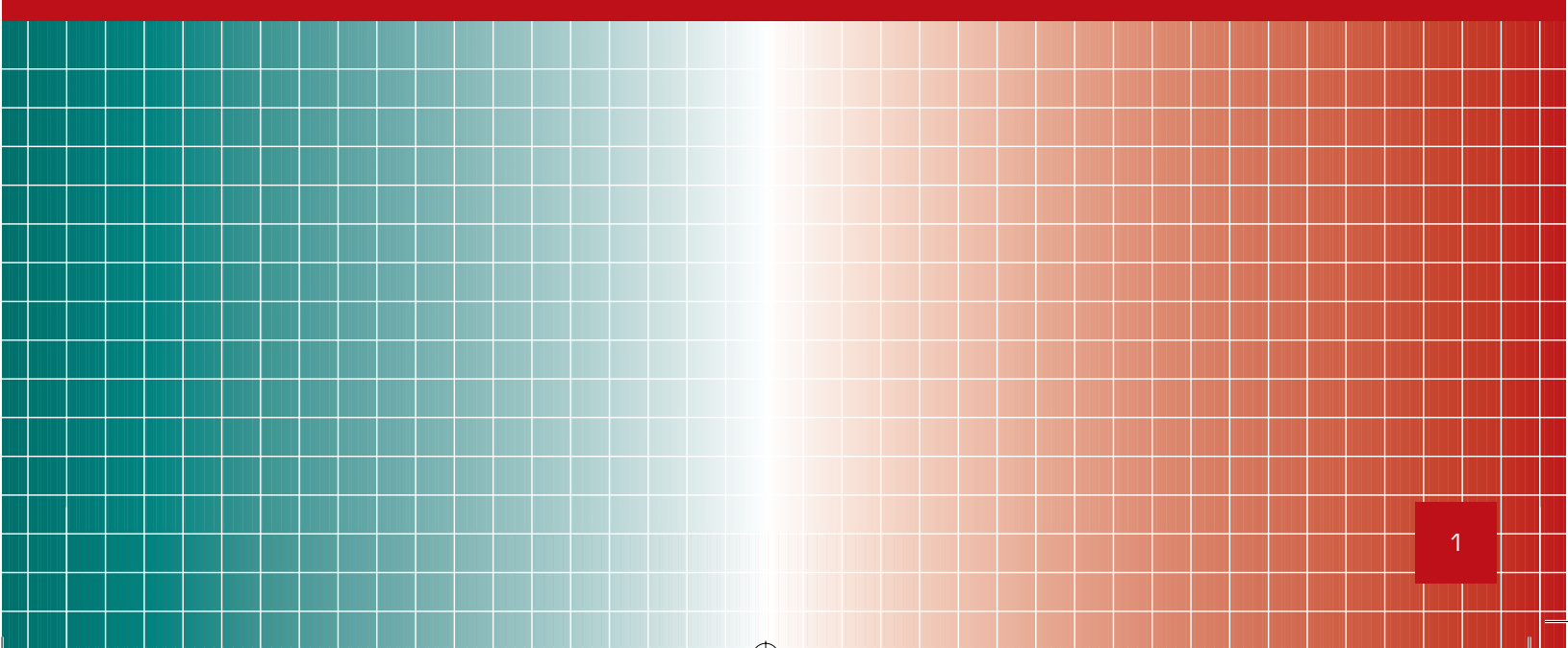
This Overview does not contain specific recommendations emanating from the analysis of financial misconduct cases reported by departments for the 2006/2007 financial year. However, the PSC’s comprehensive report for the 2007/2008 financial year will again include recommendations aimed at having a meaningful impact on the challenges faced in the financial misconduct domain.





Chapter 1

Introduction



1. INTRODUCTION

When citizens elect government into office, they entrust it with the responsibility of governing and managing public resources responsibly. This in actual fact constitutes a contract of accountability between citizens and government. The degree to which Public Service institutions embrace the values of responsiveness, accountability and integrity in responding to the needs and demands of the people is an important aspect of good governance. Despite the responsibility entrusted to government to manage public resources and deliver services, not all Public Service employees are committed to uphold this obligation. Previous reports on financial misconduct have depicted the extent of the mismanagement of public funds, which resulted in disciplinary action being taken against employees. The increased public transparency in the area of financial misconduct provides a powerful means to encourage better financial management, administration and public accountability.

The Public Service Commission (PSC) is an independent and impartial institution established in terms of section 196 of the *Constitution of the Republic of South Africa*, 1996. Its Constitutional mandate authorises it to investigate and evaluate the organization and administration, and personnel practices of the Public Service. The PSC is thus, in terms of the above-mentioned constitutional mandate, empowered to monitor and evaluate financial misconduct as determined by the Public Finance Management Act (PFMA), 1999⁴, read with the Treasury Regulations⁵.

In this regard section 85(1)(a) and (e) of the PFMA, read with Treasury Regulation 4.3, determines that the accounting officer must, as soon as the disciplinary proceedings are completed, report to, amongst others, the executive authority and the PSC on the outcome, including-

- (a) the name and rank of the official against whom the proceedings were instituted;
- (b) the charges, indicating the financial misconduct the official is alleged to have committed;
- (c) the findings;
- (d) any sanction imposed on the official; and
- (e) any further action to be taken against the official, including criminal charges or civil proceedings.

The PSC has decided to issue a comprehensive Report on Financial Misconduct on a biennial basis. Its objective in the Overview on Financial Misconduct for the 2006/2007 financial year (1 April 2006 to 31 March 2007) is, therefore, to provide its stakeholders with a statistical overview and brief analysis of the information provided by national and provincial departments on finalized financial misconduct cases reported to the PSC for the financial year. This overview adds to the previous reports on financial misconduct published by the PSC and also enables the PSC to draw a comparison with the information financial misconduct reported to the PSC since the 2001/2002 financial year.

In ensuring sound financial management government disposes of a series of possible responses to individual behaviour, of which disciplinary action to deal with financial misconduct is but one. Disciplinary action is in response to willful wrongdoing or culpable negligence by employees. Financial mismanagement could, on the other hand, also be ascribed to instances of incompetence or incapacity and other factors outside an employees' control. In order to play a role in the overall improvement of the effectiveness and efficiency of financial management in the Public Service, the PSC identified systemic problems which could have led to financial mismanagement by means of a trends analysis of the information emanating from the reports of the PSC on financial misconduct for previous financial years.

When public sector officers are exposed as being involved in fraud, the public loses confidence.

A public sector that does not have the confidence of the citizens can no longer work effectively.

Fraud in the Public Sector Corruption and Crime Commission of Western Australia

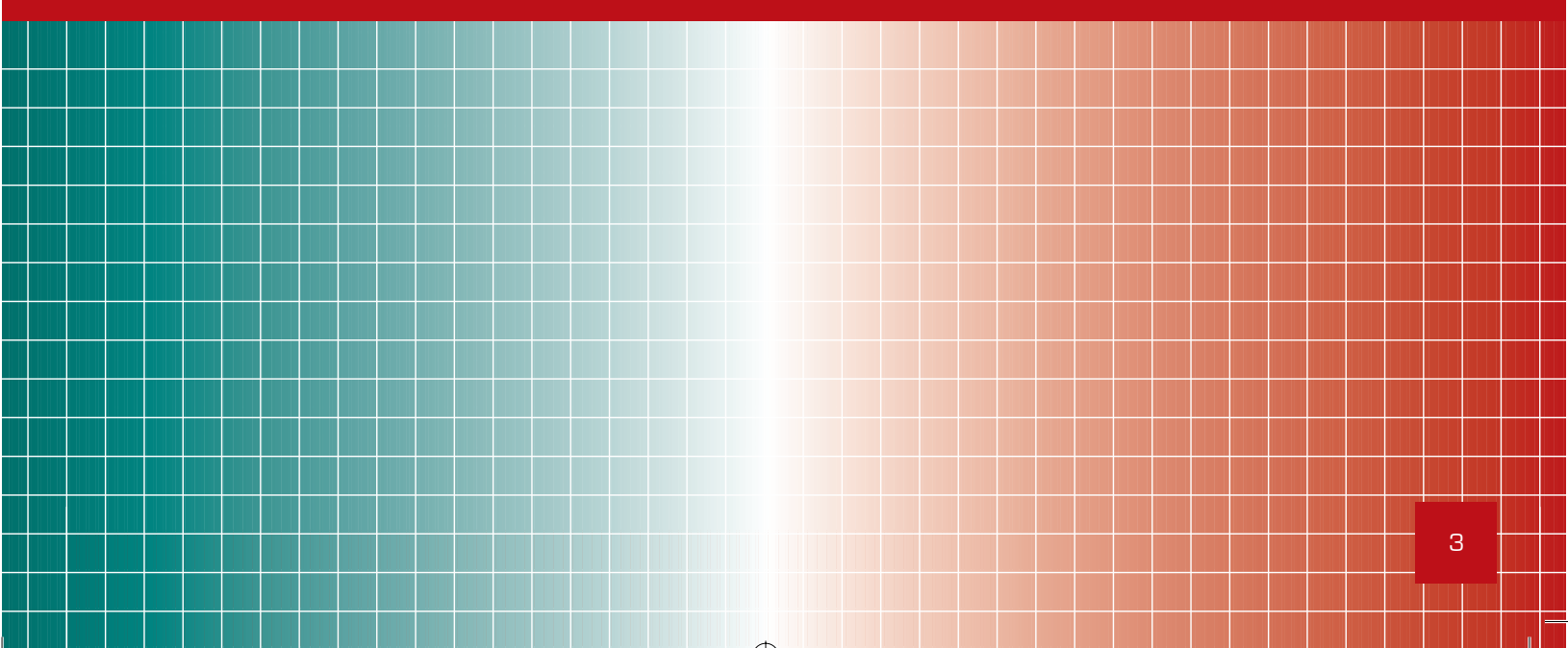
⁴ Republic of South Africa. *The Public Finance Management Act. Act 1 of 1999.*

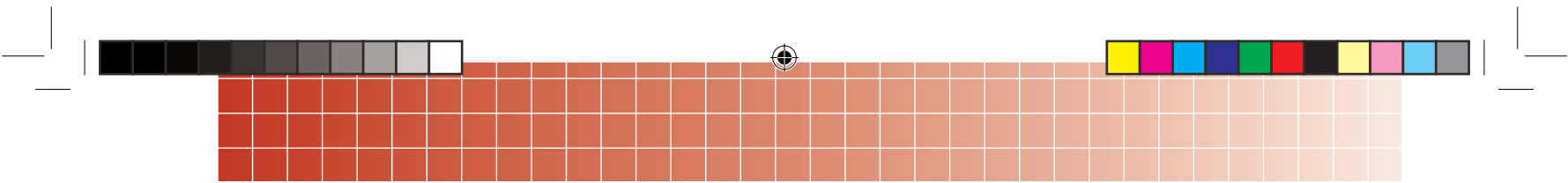
⁵ Republic of South Africa. *Treasury Regulations, 2002 published in Government Gazette No. 23463 dated 25 May 2002.*



Chapter 2

Methodology





2. METHODOLOGY

Although departments are compelled to report the outcome of finalized financial misconduct cases to the PSC, most departments do not comply with the prescripts and must on a continuous basis be reminded to report to the PSC. For this purpose, a Circular dated 23 May 2007 was disseminated to heads of all national and provincial departments, requesting them to report finalized financial misconduct cases for the financial year 2006/2007 to the PSC by 11 June 2007. It should be borne in mind that the statistics called for are for the previous financial year; and therefore departments should have them readily available.

In order to ensure that the Circular reached the relevant stakeholders it was also transmitted per fax and e-mail to contact persons identified by departments in the inputs for the 2005/2006 financial year. Due to the fact that a number of departments did not submit comprehensive reports containing the required information to the PSC in previous financial years, a format for reporting had been furnished to departments since the 2002/03 financial year. The reporting format was developed in line with the provisions of Treasury Regulations 4.3⁶, read with section 85(1)(a) and (e) of the PFMA⁷ (**Annexure A**). Departments were furthermore 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.

In order to be able to report accurately on Financial Misconduct in the Public Service it is imperative that all 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 should be submitted.

On the expiry of the due date for inputs, further follow-ups were made telephonically, by facsimile and via e-mail. As a result of poor responses by national and provincial departments, reminders were sent on 11 July 2007 to those departments that failed to provide the PSC with a response. Departments were requested to provide inputs by no later than 23 July 2007. On the latter date, 24 departments had still not responded to the PSC. Further telephonic follow-ups were subsequently made to departments, requesting them to provide inputs. The last input was received on 31 July 2007. All national and provincial departments subsequently submitted inputs to the PSC.

2.1 RESPONSES FROM NATIONAL AND PROVINCIAL DEPARTMENTS

Tables 1 and 2 below reflect those national and provincial departments that have reported finalized 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.

2.1.1 NATIONAL DEPARTMENTS

Similar to the 2005/2006 financial year, all national departments submitted a report for the 2006/2007 financial year. Of the 35 national departments, 14 departments indicated that they had no financial misconduct cases for the financial year.



⁶ Republic of South Africa. Treasury Regulations, 2002 published in Government Gazette No. 23463 dated 25 May 2002.
⁷ Republic of South Africa. The Public Finance Management Act, Act 1 of 1999.



Table I: 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	
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	

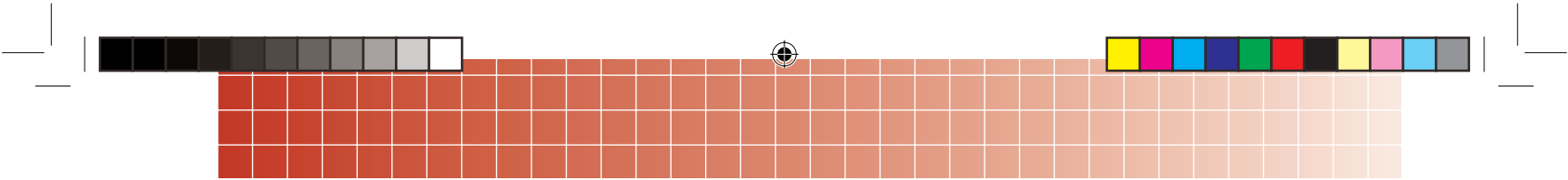
2.1.2 PROVINCIAL ADMINISTRATIONS

The responses of Provincial Administrations are reflected in **Table 2** below. All provincial departments provided inputs to the PSC. Of the 107 provincial departments, 47 indicated that they had no financial misconduct cases for the financial year:

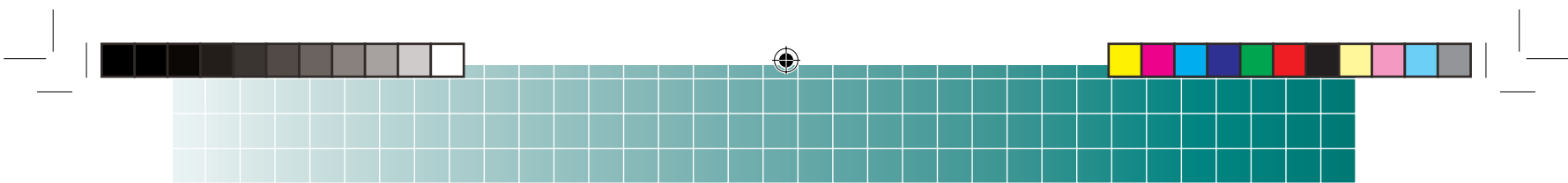
Table 2: Reports received from Provincial Administrations

PROVINCE	DEPARTMENT	CASES REPORTED	NO CASES REPORTED
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	
	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 Services	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

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



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

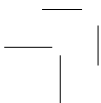


2.2 Limitations experienced

Despite the provision of the reporting format and requests to provide comprehensive details to the PSC, some departments, once again failed to comply with the reporting format and others submitted insufficient information. Furthermore, the information provided in many instances appeared not to have been quality checked. In order to improve data integrity, follow-up enquiries had to be made with various departments, which delayed the completion of the report. These are, for example, the –

- Departments of Education in the Eastern Cape Province and Free State provinces did not follow the reporting format;
- Departments of Public Transport, Roads and Works in Gauteng and Transport in KwaZulu-Natal and the National Department of Labour reported on cases which were still pending, whilst the Treasury Regulations clearly stipulates that they have to report on the outcome of cases.
- Departments of Education in KwaZulu-Natal, the Eastern Cape, the Western Cape and Free State, Gauteng Health, Justice and Constitutional Development and Land Affairs reported incomplete information, omitting, for instance the salary level, the cost of financial misconduct or further action taken (such as criminal or civil action).

During an analysis of the database of finalized cases reported during the 2005/2006 and 2006/2007 financial years, it came to the fore that some cases were duplicated in the sense that the same employees committed the same offences, involving the same amounts, resulting in the same sanctions in both years. Upon further follow-up it was determined that some departments have not only reported those cases where the disciplinary proceedings were finalized during the particular reporting period, but also those cases reported during previous financial years where the debt is still in the process of being recovered. The failure of departments to comply with the reporting requirements set out in the Treasury Regulations has resulted in inaccurate data being reported by departments. This inaccuracy impacts on the total number of cases being reported, as departments were unable to provide accurate information.



Chapter 3

Statistical Overview

3. STATISTICAL OVERVIEW

3.1 INTRODUCTION

This section presents a statistical overview of the information reported by national and provincial departments for the period 01 April 2006 until 31 March 2007. It reflects information on the total number of cases reported by national and provincial departments, types of financial misconduct, salary levels and gender of employees charged with misconduct, the outcome and sanctions imposed in cases of financial misconduct, the cost of financial misconduct and finally whether or not criminal action had been taken against employees charged with financial misconduct. Based on the statistical information, comments are made where applicable and limited reference will be made to reports on financial misconduct for previous financial years.

3.2 THE NUMBER OF EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

A total of 1042 cases of financial misconduct were reported for the 2006/2007 financial year, of which 370 cases were reported by national departments and 672 cases were reported by provincial departments. This represents a substantial increase from the 771 cases reported in the previous financial year (2005/2006).

3.2.1 NATIONAL DEPARTMENTS

As indicated earlier, all national departments responded to the PSC. Figure 1 below provides an overview of the 370 cases reported at national level for the 2006/2007 financial year.

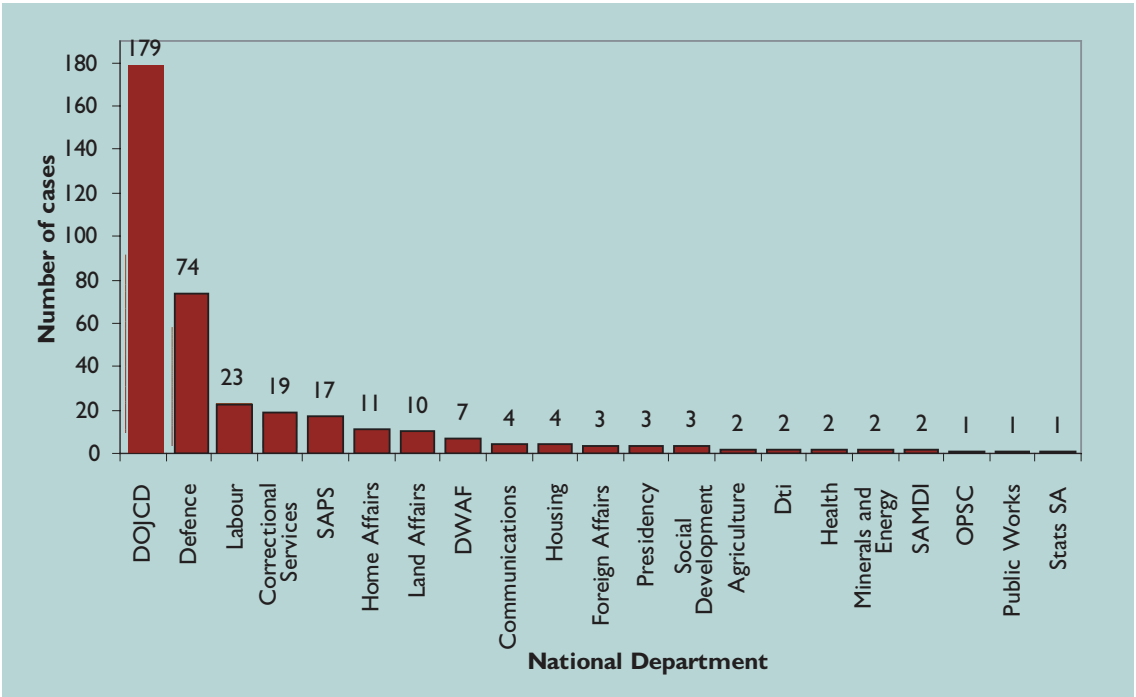


Figure 1: Number of cases at national level

Similar to the 2005/2006 financial year the DOJCD reported the highest number of cases and the Department of Defence reported the second highest number of cases. Furthermore, the 179 cases reported by the DOJCD rep-

resent 48% of the total number of cases reported by all national departments. It serves to be mentioned that in 43 of the 179 cases (24%) reported by the DOJCD, the charges were withdrawn by the Department. The Department of Defence has reported exactly the same number of cases as compared to the previous financial year (74 cases).

3.2.2 PROVINCIAL ADMINISTRATIONS

Figure 2 below provides an overview of the 672 cases reported at provincial level for the 2006/2007 financial year.

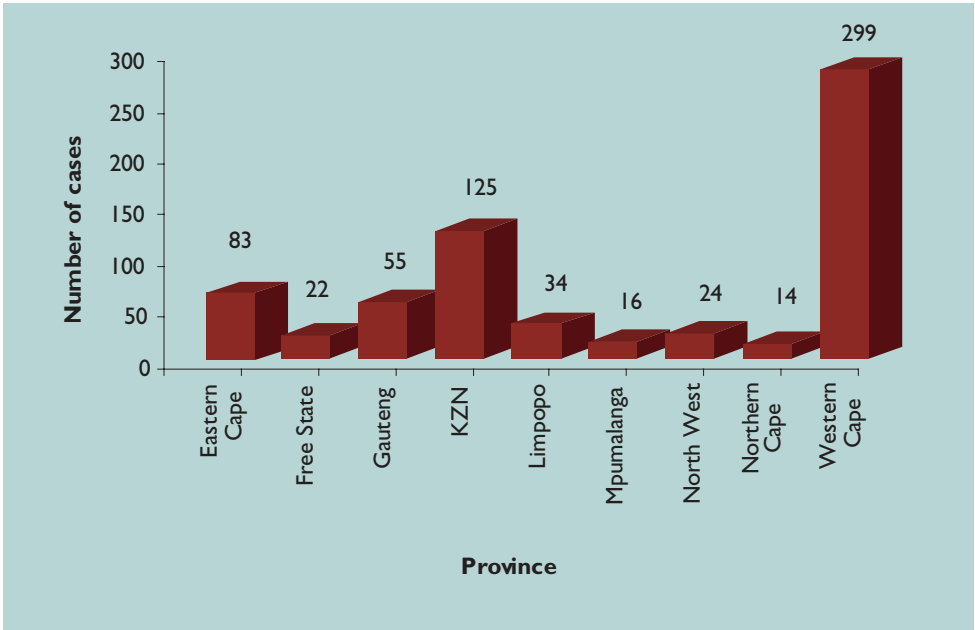


Figure 2: Number of cases reported at provincial level

The Western Cape Province reported the highest number of cases (299), representing 44% of the total number of cases reported by provinces. The Western Cape is followed by KwaZulu-Natal (125), representing 19% of the total number of cases reported by provinces. This development is a deviation from the trends of the 2003/2004 and 2004/2005 financial years, whereby the Eastern Cape Province reported the highest number of finalized cases. The Northern Cape and Mpumalanga provinces reported the lowest percentage of cases at 2%.

The increase in the number of cases reported by the Western Cape Province can be ascribed to cases involving social grant fraud. The Special Investigative Unit (SIU) was, in terms of Proclamation R18 of 2005, published on 6 April 2005, mandated to investigate the payment and/or receipt of social grants or benefits by unqualified beneficiaries, as well as the irregular and unlawful conduct of government officials and/or agents responsible for the administration and/or payment of social grants or benefits. The prosecution of cases relating to social grant fraud (comprising a total of 92% of the total number of cases reported by the Province) has led to the substantial increase in financial misconduct cases reported by the Departments of Education and Health in the Western Cape.

Overall a total number of 101 social grant fraud cases were reported by provincial departments for the 2005/2006 financial year and 294 for the 2006/2007 financial year, totaling 395 cases. In the 2006/2007 financial year these cases comprised 28% of the total number of finalized financial misconduct cases reported by departments. According to reports in the media⁸ the Minister of Social Development, Dr ZST Skweyiya, has revealed that 2058 public

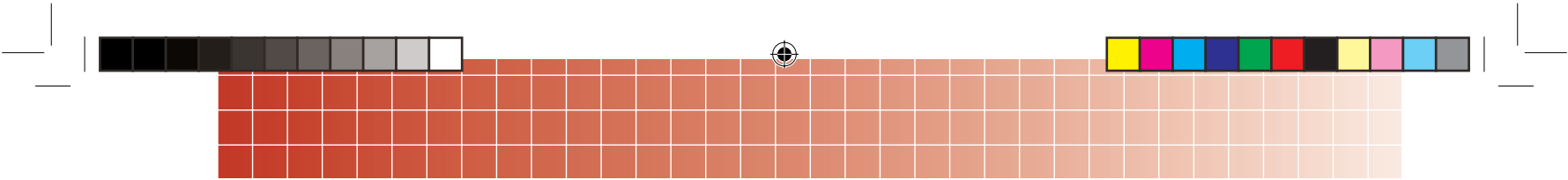
⁸ Sowetan, 26 July 2007, page 5. You pay for civil servant fraud

servants have been found guilty of receiving grants fraudulently by the courts. Although criminal action has been taken against these employees, at this stage, the information provided by departments appears to indicate that disciplinary action has not been taken against such employees in all instances.

Table 3 below provides a breakdown of finalized financial misconduct cases reported by the various departments in each province.

Table 3: Breakdown of financial misconduct cases reported by departments in provinces

PROVINCE	DEPARTMENT	NUMBER OF CASES
Eastern Cape	Agriculture	1
	Economic Development and Environmental Affairs	21
	Education	58
	Public Works	1
	Social Development	2
Eastern Cape Total		83
Free State	Education	10
	Health	5
	Public Works, Roads and Transport	3
	Sport, Arts and Culture	1
	Tourism, Environmental and Economic Affairs	3
Free State Total		22
Gauteng	Community Safety	3
	Education	5
	Gauteng Shared Services Centre	7
	Health	34
	Housing	1
	Public Transport, Roads and Works	1
	Sports, Arts, Culture and Recreation	4
Gauteng Total		55
KZN	Education	85
	Health Services	19
	Local Government and Traditional Affairs	18
	Social Welfare and Population Development	2
	Transport	1
KZN Total		125
Limpopo	Agriculture	4
	Economic Dev, Environment & Tourism	1
	Education	4
	Health & Social Development	13
	Local Government and Housing	3
	Premier's Office	1



PROVINCE	DEPARTMENT	NUMBER OF CASES
	Public Works	3
	Roads and Public Transport	1
	Sport, Arts and Culture	4
Limpopo Total		34
Mpumalanga	Agriculture and Land Administration	1
	Culture, Sport and Recreation	1
	Education	3
	Health and Social Services	4
	Local Government and Housing	4
	Public Works	2
	Roads and Transport	1
Mpumalanga Total		16
North West	Agriculture, Conservation, Environment	5
	Education	2
	Finance	1
	Office of the Premier	7
	Public Works	1
	Social Development	2
	Sport, Arts and Culture	5
	Transport, Roads and Community Safety	1
North West Total		24
Northern Cape	Education	2
	Health	3
	Office of the Premier	1
	Provincial Treasury	1
	Safety and Liaison	4
	Social Services and Population Dev	3
Northern Cape Total		14
Western Cape	Agriculture	1
	Cultural Affairs and Sport	10
	Economic Development and Tourism	3
	Education	193
	Health	86
	Local Government and Housing	3
	Social Development	1
	Transport and Public Works	2
Western Cape Total		299
Grand Total		672



3.3 TYPES OF FINANCIAL MISCONDUCT REPORTED

In terms of the PFMA, financial misconduct entails any material losses through criminal conduct, unauthorized, 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 categorized as reflected in **Table 4** below. The table also reflects examples of reported cases that fall into these categories.

Table 4: 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 unauthorized 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 authorized to approve expenditure

The figure on the following page is an indication of the types of financial misconduct reported by the departments during the 2006/2007 financial year.

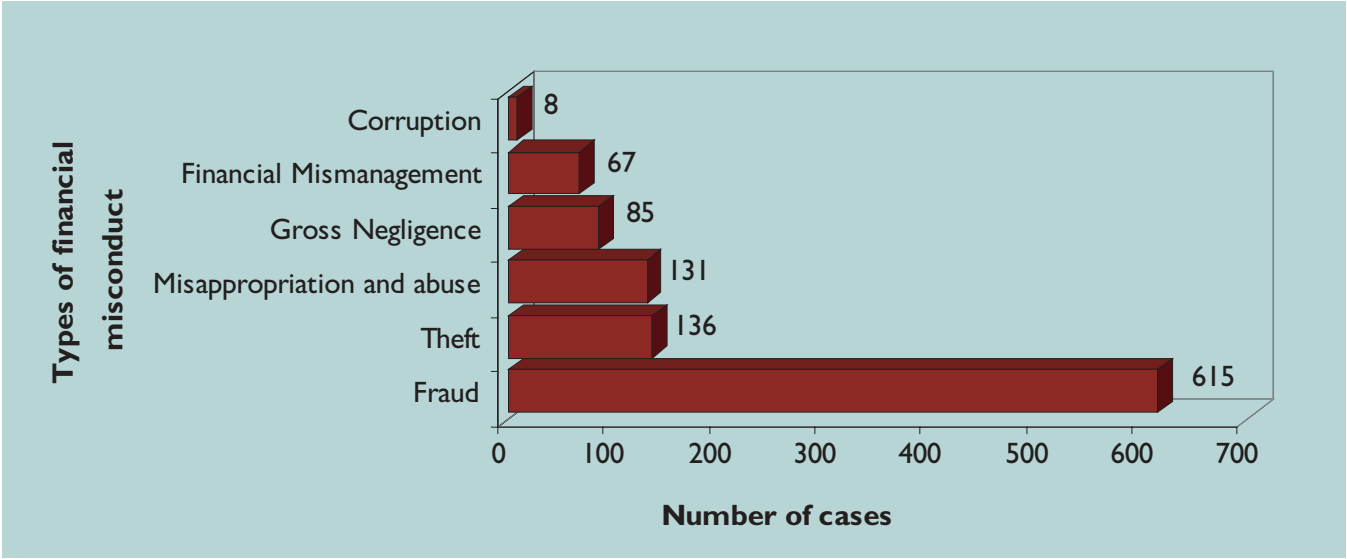


Figure 3: The types of financial misconduct reported by departments for the 2006/2007 financial year

During previous financial years, cases involving “fraud” and “theft” were reported on by the PSC in one category, namely “*fraud and theft*”. During the 2006/2007 financial year this category was split into two separate categories in order to obtain a clearer picture of the two different acts of financial misconduct. **Figure 3** above also reflects that cases in the category “*fraud*” comprise a significant portion (59%) of the overall number of cases reported. Furthermore, cases in the category “*theft*” comprise the second highest number of cases (13.1%). This trend is in keeping with previous financial years, during which cases in the category “*fraud & theft*” comprised 64.7% of the overall number of cases reported.

Why do employees and departments fail to comply?

- Lack of knowledge of the PFMA and Treasury Regulations.
- Ignorance of why the rules are in place.
- Knowledge of the rules but the environment facilitates breaking them.
- No sense of accountability or little concern for accountability.
- Officials show no fear about breaking rules that apply internally, with many believing there is no obligation to follow a policy.
- A sense of entitlement (officials seek benefits or restitution).
- A sense of being above rules and their application.

Adapted from The Financial Administration Act: Responding to Non-compliance – Meeting the Expectations of Canadians (<http://www.tbs-sct.gc.ca/report/rev-exa/faa-lgfp/faa-lgfp07>)

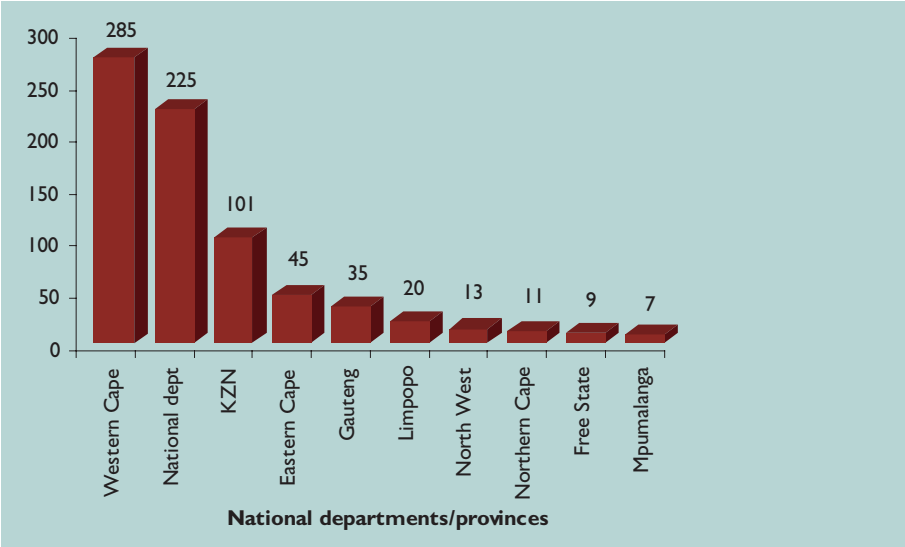


Figure 4: Breakdown of fraud and theft cases at national/provincial level

Figure 4 above shows that the Western Cape Province followed by National Departments have the highest number of fraud and theft cases. In the Western Cape Province, as indicated earlier in this Overview, the large number of fraud cases is ascribed to the social grant fraud. However, in respect of National Departments no particular trend was identified to clarify the high incidence of fraud and theft cases. It might be possible that the large number of cases reported by the Department of Justice and Constitutional Development (179), representing 48% of the total number of cases reported by national departments, is ascribed to their commitment to root out fraud and corruption.

3.4 LEVELS OF EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

In terms of Treasury Regulations 4.3.1, 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 2006/2007. Due to the fact that the salary levels of employees were not indicated in 102 (10%) of the finalized 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 being provided.

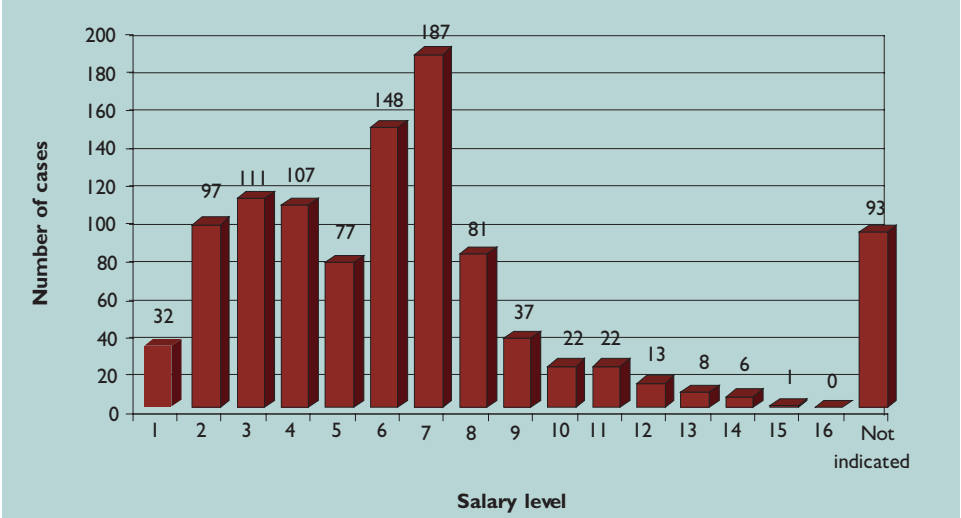


Figure 5: Salary levels of employees charged with financial misconduct

The figure on the following page 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. A comparison of the percentage of the total number of employees per salary category (as at 30 May 2007) and the percentage of the total number of finalized financial misconduct cases reported for the 2006/2007 financial year is reflected in **Figure 6** below.

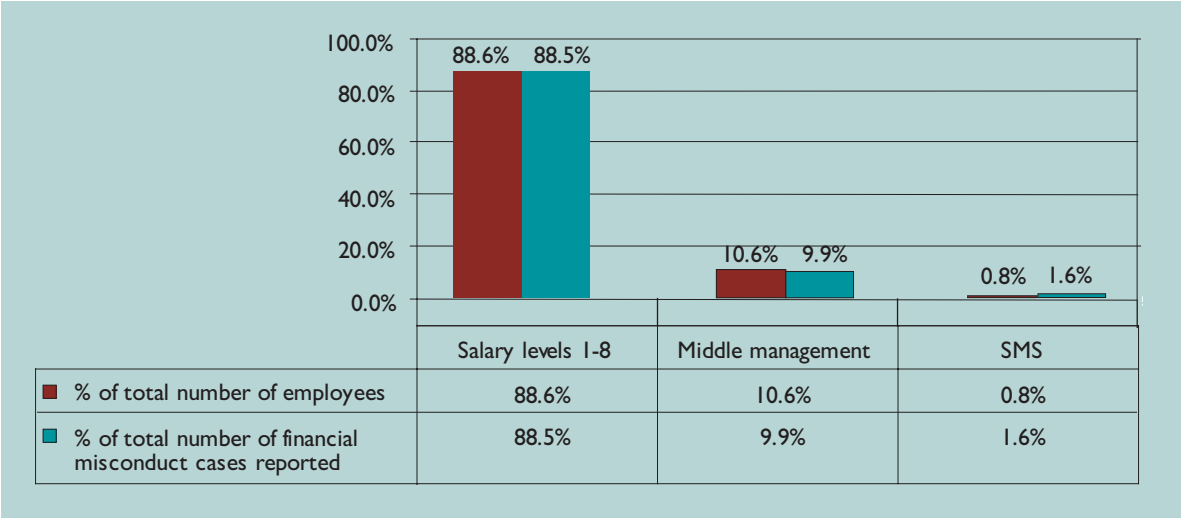


Figure 6: Comparison of the percentage of the total number of employees per salary category and the percentage of the total number of finalized financial misconduct cases reported

Figure 6 shows that the percentage of the total number of employees employed at salary levels 6 and 7 (35.1%) as at 30 May 2007, correlates closely with the percentage of finalized misconduct cases reported on this level (34.7%). In other words, although the highest number of cases was reported on salary levels 6 and 7, proportionally as these levels represent the highest number of employees in the Public Service, they are not necessarily more prone to commit financial misconduct.

The largest number of financial misconduct cases was encountered at salary levels 1 to 8. As reflected in the comparison of the percentage of the total number of employees per salary category (as at 30 May 2007) and the percentage of the total number of finalized financial misconduct cases reported for the 2006/2007 financial year as reflected in **Figure 6** above, this trend is in keeping with employee demographics in the Public Service as at 30 May 2007.

A comparison of the percentage of the total number of employees at the SMS level (0.8%) and the percentage of the total number of finalized financial misconduct cases in respect of SMS members (1.6%) for the 2006/2007 financial year points to the fact that employees in the SMS are more prone to committing financial misconduct.

This is a worrying trend as the SMS plays a pivotal role in the establishment and maintenance of a culture that both frowns upon financial misconduct and seeks to promote sound stewardship of government resources. As role models for the organization, Members of the SMS are held to a higher standard. Conversely, it should be mentioned that at SMS level, there has been a substantial decline from the percentage of cases in the 2005/2006 financial year (19, representing 2.5% of the total number of cases reported), as compared to the 1.6% of cases reported for the 2006/2007 financial year.

3.5 GENDER OF EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

Of the 1042 cases reported, departments did not indicate the gender in 10% of the cases. **Figure 7** below reflects that of the remaining 90% of reported cases, financial misconduct was committed by males in 35% of the reported cases, and by females in 55% of the reported cases.

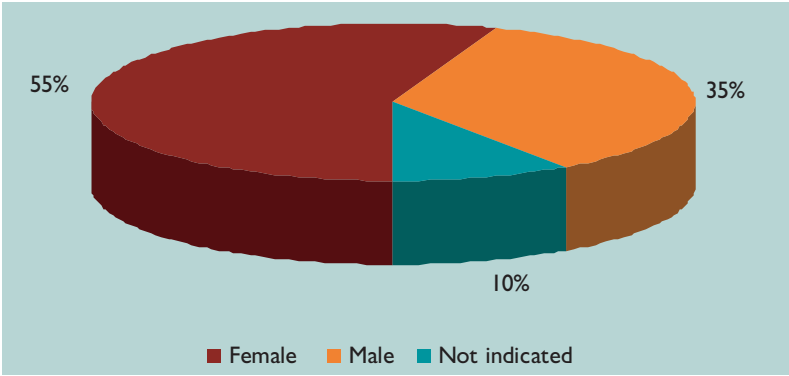


Figure 7: Gender of employees in respect of financial misconduct cases

Figure 8 below provides a comparison of the percentage of the gender of the total number of employees employed as at 30 May 2007, and the percentage of the gender of the total number of finalized misconduct cases reported.

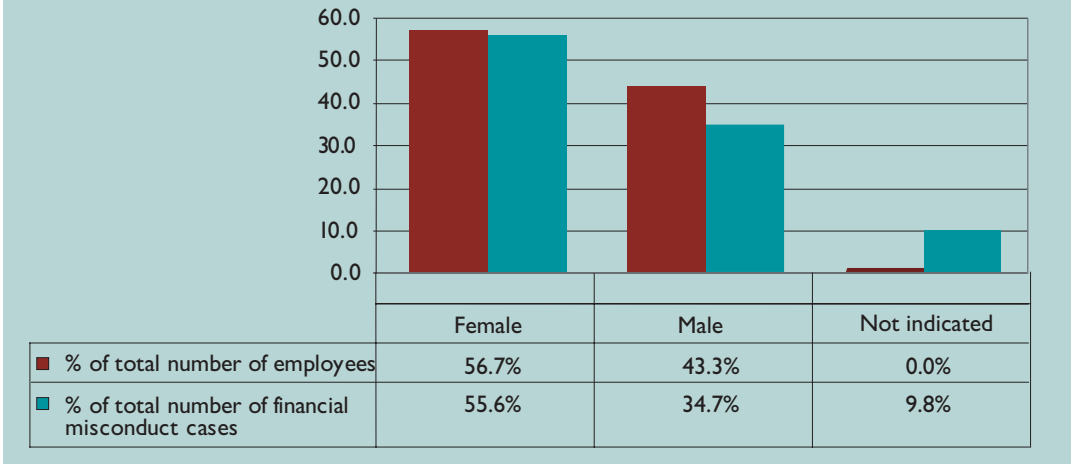


Figure 8: Comparison of the percentage of the total number of employees in relation to gender and the percentage of the total number of finalized financial misconduct cases reported

Figure 8 illustrates that the distribution of cases involving financial misconduct for the 2006/2007 financial year in respect of females closely correlates with the employee demographics as at 30 May 2007. Males, on the other hand, appear to be less prone to committing financial misconduct. However, the fact that the gender of employees was not indicated in 9.8% of the reported cases could have an impact on these figures. It should also be borne in mind that there is 13.4% more female employees than male. This trend is not in keeping with research conducted by the Anti-Corruption Resource Centre⁹, which suggests that women across different societies appear to be less corrupt than men.

The types of financial misconduct cases discussed in paragraph 3.3 above were further categorized in terms of

⁹ Frequently asked questions. Anti-Corruption Resource Centre. Causes & consequences of corruption. Gender. Available from: <http://www.u4.no/helpdesk/faq/faqs1.cfm> [Accessed on 20 July 2007]

gender. **Figure 9** below contains an analysis of the percentage of the types of financial misconduct in respect of gender.

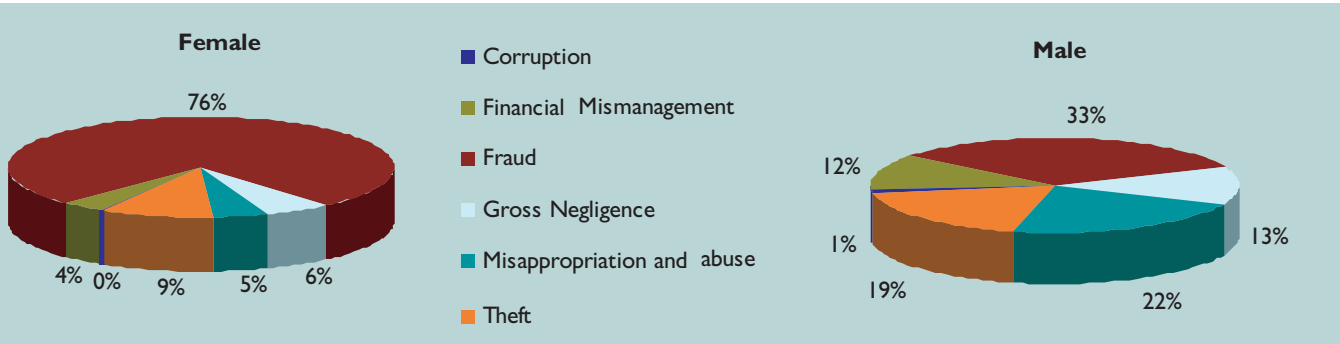


Figure 9: Percentage of the types of financial misconduct in respect of gender

Figure 9 shows that in respect of the 579 cases involving females, incidences of fraud constitute 76% of the total number of cases. In respect of the 361 cases involving males, 33% of the reported cases involved incidences of fraud and 22% of the cases involved incidences of misappropriation and abuse. Again, the cases involving social grant fraud impacted on these figures as 285 of the social grant cases involved females, whereas only 9 cases involved males.

3.6 OUTCOME OF FINANCIAL MISCONDUCT CASES

The Treasury Regulations provides for departments to report on the outcome of disciplinary proceedings. For statistical purposes the outcome of cases reported by departments were categorized as reflected in **Table 5** below.

Table 5: Types of outcomes of finalised financial misconduct cases reported

CATEGORY	DESCRIPTION
Guilty	Cases where the Chairperson of the disciplinary hearing had found the employee guilty of the charge(s), or the employee pleaded guilty to the charges.
Withdrawn	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.
Resigned	Cases where the employee has resigned from the Public Service whilst the disciplinary case was pending.
Not guilty	Cases where the Chairperson of the disciplinary hearing has found the employee not guilty of the charge(s).
Contract expired/ Retired/ Deceased/ Absconded	Cases where, whilst the disciplinary case was pending – <ul style="list-style-type: none">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; andthe employee absented him/herself from his/her official duties without permission for a period exceeding one calendar month.

Figure 10 below provides an analysis of the outcome of financial misconduct cases reported to the PSC during the 2006/2007 financial year:

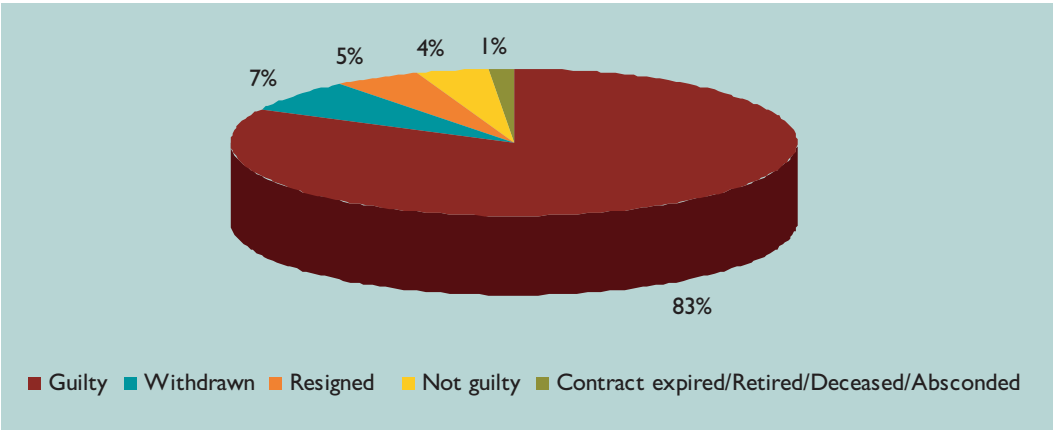


Figure 10: Outcome of financial misconduct cases for the 2006/07 financial year

Of the 1042 finalised financial misconduct cases reported, 83% of employees were found guilty.

Figure 10 also reflects that in 7% of the total number of cases, the employees resigned prior to the disciplinary process being finalised. Although a person is deemed innocent until proven guilty, the result is that such employees exit the Public Service with a clean disciplinary record. The PSC has consulted with the DPSA, being responsible for policy development in the Public Service, on this challenge. It was proposed that consideration should be given to the insertion of a deeming clause in the Public Service Amendment Bill¹⁰ that if someone resigns whilst there is a pending disciplinary process, that person will be deemed as having been discharged from the Public Service on account of misconduct, provided that the department finalizes the disciplinary case within a month of receiving the resignation request. If a case is not finalized within such a time frame, the employee would not be deemed to be discharged from the Public Service on account of misconduct. The PSC accepts that such a provision will, however, have to be done within the legal framework and with due consideration to the fact that such an act should not be to the prejudice of an employee.

3.7 SANCTIONS IMPOSED IN CASES OF FINANCIAL MISCONDUCT

In terms of section 38 of the PFMA, 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, 1994, the South African Police Service Act, 1995 and the Defence Act, 1957.

The figure on the following page indicates the type of sanctions imposed by the departments for the financial year 2006/2007.

¹⁰ Republic of South Africa. Public Service Act Amendment Bill. Government Gazette No. 29259 of 29 September 2006.

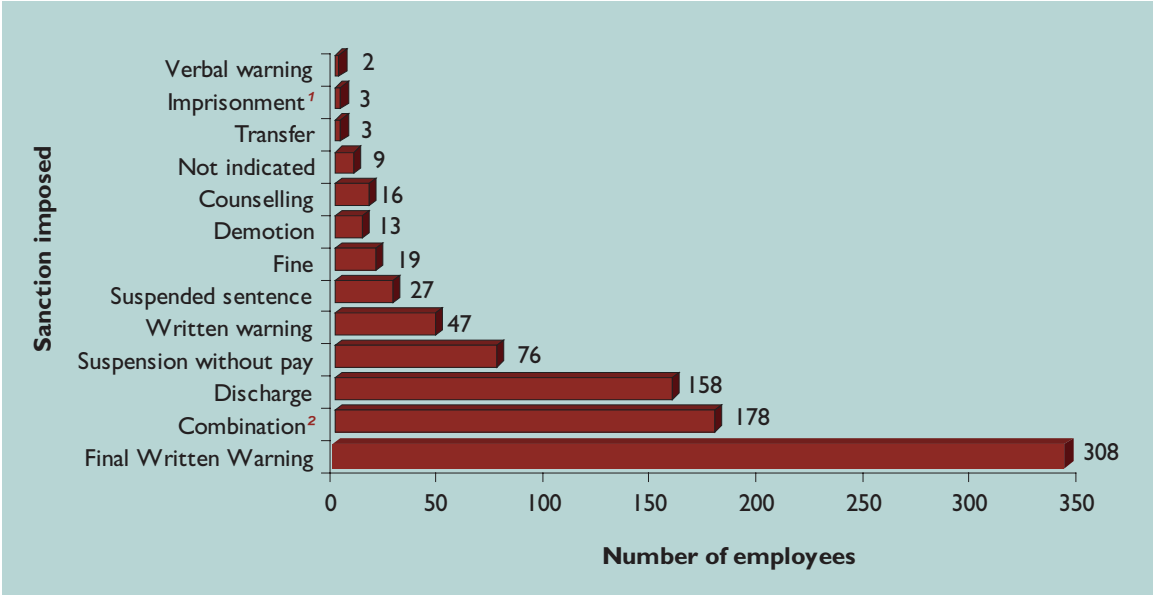


Figure 11: Sanctions imposed in financial misconduct cases

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 11 above indicates that for the 2006/2007 financial year final written warnings (308 cases, representing 36% of the total) were the most prevalent sanctions imposed upon a finding of guilty, followed by a combination of sanctions (178 cases, representing 21% of the total). Discharge as a sanction was imposed in 158 (18%) of the instances where employees were found guilty following charges of misconduct. 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.

In relation to the 294 cases relating to social grant fraud, the sanction of a final written warning was imposed as a sanction in 64% (189) of the cases, and discharge from the Public Service was only imposed as a sanction in 1% (3) of the cases. The sanctions imposed in these cases had an impact on the high incidence of final written warnings imposed during the 2006/2007 financial year.

3.8 COST OF FINANCIAL MISCONDUCT

It is almost impossible to determine the true nature and extent of financial misconduct, because it is generally associated with secretive activity. Furthermore, more often than not, like any form of corruption, it is referred to as a “victimless crime”. However, this is not the case as financial misconduct erodes the institutional capacity of government and impacts negatively on social equity. Furthermore, the long-term effects of financial misconduct on the overall social system have a pernicious effect on efficiency.

The total cost reported by national and provincial departments emanating from unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct for the 2006/07 financial year was

R130,615,994.82. During the same period, 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 Subsistence and Travel claim is not paid). Although 16% seems low, it should be taken into consideration that departments have to report to the PSC on the outcome of the disciplinary case. Upon finalization of the disciplinary process, the recovery of the value of the loss or damage has not necessarily taken place. For instance, in 23% of the instances whereby employees were found guilty of financial misconduct, departments indicated that the recovery process is pending, and in 21% of the instances departments indicated that debtors accounts have been created to commence with the recovery process.

It should also be noted that 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. A breakdown of the cost of financial misconduct reported at National and Provincial level is indicated below:

3.8.1 COST OF FINANCIAL MISCONDUCT REPORTED AT NATIONAL LEVEL

Table 6 below reflects the financial loss as reported by the national departments for the 2006/2007 financial year. An amount of R45,975,467.74 was lost as a result of financial misconduct in national departments. However, only an amount of R19,644,693.77 (43% of the total loss in national departments) was recovered at the time of reporting to the PSC. This reflects that a substantial amount totaling R26,330,773.97 was not recovered at the time departments reported on the outcome of cases to the PSC. This amount is considered as unauthorized and wasteful expenditure that should be recovered by departments.

Table 6: Cost of financial misconduct reported at national level

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Agriculture	16,030,000.00	16,000,000.00
Correctional Services	516,691.68	36,268.84
Communication	4,035,724.14	0.00
Defence	3,633,493.00	357,454.00
Foreign Affairs	13,202,932.00	0.00
Health	37,190.23	0.00
Home Affairs	181,451.92	39,567.23
Housing	71,407.84	8,285.22
DOJCD	432,219.39	0.00
Labour	1,323,136.85	0.00
Land Affairs	187,598.03	63,509.89
Minerals and Energy	42,942.48	0.00
Presidency	5,087,573.37	2,885,704.80
Public Service Commission	19,629.28	0.00
Public Works	392,880.97	0.00
SAMDI	193,858.15	193,858.15

DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
South African Police Services (SAPS)	176,937.44	250.00
Social Development	1,218.00	1,218.00
Stats SA	92,100.60	38,738.80
Trade and Industry	250,000.00	0.00
Water Affairs and Forestry Total	66,482.37	19,838.84
Total	45,975,467.74	19,644,693.77
Amount not recovered		26,330,773.97

Of the amount of R16.03 million reported by the Department of Agriculture, one case of attempted fraud involved an amount of R16 million and one case involved an amount of R30,000.00. In respect of the former case, the State suffered no loss as a result of the fact that the attempt to defraud the State was detected timeously.

3.8.2 COST OF FINANCIAL MISCONDUCT REPORTED AT PROVINCIAL LEVEL

The table below reflects the financial loss as reported by the provincial departments for the 2006/2007 financial year. From the amount of R84,640,527.08 that was lost as a result of financial misconduct only an amount of R1,193,987.97 (1% of the total cost) was recovered. An amount of R83,446,539.11 had therefore not been recovered at the time departments reported on the outcome of cases to the PSC. Although not all the departments indicated the cost of financial misconduct to the PSC, it is apparent that the material loss as a result of financial misconduct is substantial and would impact negatively on service delivery. The rate of recovery at provincial level (1%) at the time of reporting to the PSC appears to be very low, compared to the 45% recovered by national departments.

Table 7: Cost of financial misconduct reported at provincial level

PROVINCE	DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
Eastern Cape	Agriculture	140.00	140.00
	Economic Development and Environmental Affairs	103,942.49	3,000.00
	Education	789,998.57	171,470.97
Eastern Cape Total		894,081.06	174,610.97
Free State	Health	225,468.73	760.00
	Public Works, Roads and Transport	132,120.00	132,120.00
	Sport, Arts and Culture	3,903.00	0.00
	Tourism, Environmental and Economic Affairs	72,463.37	0.00
Free State Total		433,955.10	132,880.00
Gauteng	Community Safety	344,000.00	20,000.00
	Education	624,857.80	12,857.00



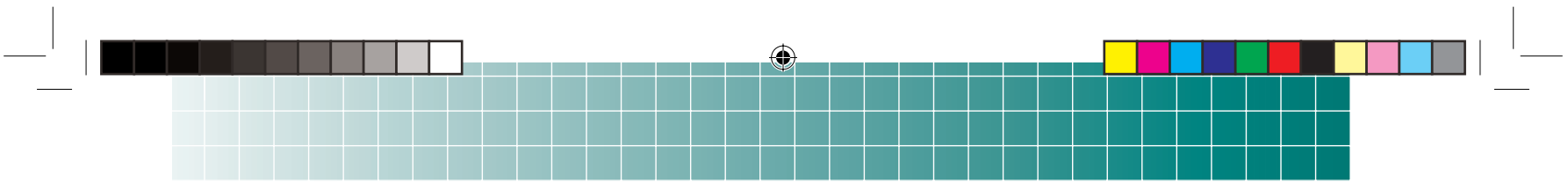
PROVINCE	DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
	Gauteng Shared Services Centre	655,831.65	43,400.00
	Health	22,258.17	15,785.00
	Housing	36,616.40	0.00
	Sports, Arts, Culture and Recreation	46,896.30	17,000.00
	Gauteng Total	1,730,460.32	109,042.00
KZN	Education	801,965.67	0.00
	Health Services	20,067.58	20,067.58
	Local Government and Traditional Affairs	26,565.92	26,565.92
	Social Services and Population Dev	137,000.00	0.00
	Transport	36,915.00	0.00
	KZN Total	1,022,514.17	46,633.50
Limpopo	Agriculture	884,689.33	0.00
	Economic Dev, Environment & Tourism	10,700.00	3,300.00
	Education	2,471.92	0.00
	Health & Social Development	263,892.43	6,133.00
	Local Government and Housing	437,320.84	307,274.58
	Premier's Office	34,701.90	0.00
	Public Works	100,014.47	0.00
	Roads and Public Transport	60,000,000.00	0.00
	Sport, Arts and Culture	56,003.00	56,003.00
	Limpopo Total	61,789,793.89	372,710.58
Mpumalanga	Agriculture and Land Administration	229,021.75	0.00
	Culture, Sport and Recreation	24,700.00	24,700.00
	Education	8,600.00	8,600.00
	Health and Social Services	107,444.57	0.00
	Local Government and Housing	350,198.00	1,500.00
	Public Works	89,135.87	0.00
	Roads and Transport	6,600,000.00	0.00
	Mpumalanga Total	7,409,100.19	34,800.00

PROVINCE	DEPARTMENT	AMOUNT R/C	AMOUNT RECOVERED/ NO LOSS TO STATE R/C
North West	Agriculture, Conservation, Environment	3,212,646.33	12,646.33
	Education	503,920.21	3,920.21
	Finance	408,000.00	0.00
	Office of the Premier	104,258.81	29,233.00
	Public Works	6,660.00	0.00
	Social Development	25,839.00	0.00
	Sport, Arts and Culture	7,800.00	0.00
	Transport, Roads and Community Safety	300,000.00	0.00
North West Total		4,569,124.35	45,799.54
Northern Cape	Education	3,675.00	3,675.00
	Health	622,309.48	0.00
	Office of the Premier	157,000.00	0.00
	Provincial Treasury	1,542.70	0.00
	Safety and Liaison	490,841.65	0.00
	Social Services and Population Dev	215,000.00	0.00
Northern Cape Total		1,490,368.83	3,675.00
Western Cape	Cultural Affairs and Sport	280,803.00	208,540.00
	Economic Development and Tourism	17,250.66	0.00
	Education	849,280.18	37,760.00
	Health	270,131.15	0.00
	Local Government and Housing	3,848,784.18	27,536.38
	Social Development	25,000.00	0.00
	Transport and Public Works	9,880.00	0.00
Western Cape Total		5,301,129.17	273,836.38
Grand Total		84,640,527.08	1,193,987.97
Amount not recovered			83,446,539.11

The cost of financial misconduct has been the highest in the Limpopo Province with the total cost of financial misconduct being R61,789,793.89 (73% of the total cost of financial misconduct in provinces), followed by Mpumalanga Province (R7,409,100.19, representing 9% of the total cost of financial misconduct in provinces). The Free State Province reported the lowest financial loss, R433,955.10 (0.5%), as a result of financial misconduct.

The two cases involving the largest amounts are as follows:

- The Department of Roads and Public Transport in the Limpopo Province, reported a single case of financial misconduct amounting to R60,000,000.00 (Sixty Million Rand). The Department in its report indicated that



two employees on salary level 7 were involved in the misdemeanor. It is alleged that these two employees were engaged in fraudulent activities pertaining to the registration of stolen motor vehicles. Disciplinary action was taken against the said employees, and a sanction of discharge from the Public Service was imposed. Furthermore, the report reveals that the amount of R60 000 000, 00 has not yet been recovered. Upon enquiry the Department indicated that the recovery is pending the outcome of the criminal case against the said employees.

- The Department of Roads and Transport in Mpumalanga reported a case where the employee released R6,600,000.00 (Six Million Six Hundred Thousand Rand) retention money to a contractor, without having satisfied himself with the conditions of the contract. Criminal action was taken against the employee for contravening section 38 of the PFMA. He was found guilty and a three year suspended sentence was imposed. The sanction of a final written warning was imposed following the disciplinary process.

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

In the Public Service, criminal proceedings instituted against employees making themselves guilty of criminal acts or possible criminal acts or omissions are dealt with in two sets of prescripts which apply to the Public Service.

3.9.1 TREASURY REGULATIONS, 2002¹¹

Firstly, 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, 2004¹²

Secondly, the PCCA Act criminalizes 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 criminalizes 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 punishable by a fine or imprisonment for a period not exceeding 10 years.

¹¹ Republic of South Africa. Treasury Regulations, 2002 published in Government Gazette No. 23463 dated 25 May 2002
¹² Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004



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 or not further action had been taken against an employee charged with financial misconduct. In view of the fact that 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 for a decision not to take criminal action against an employee. **Figure 12** below provides a breakdown of the responses by departments in regard to further action taken against employees.

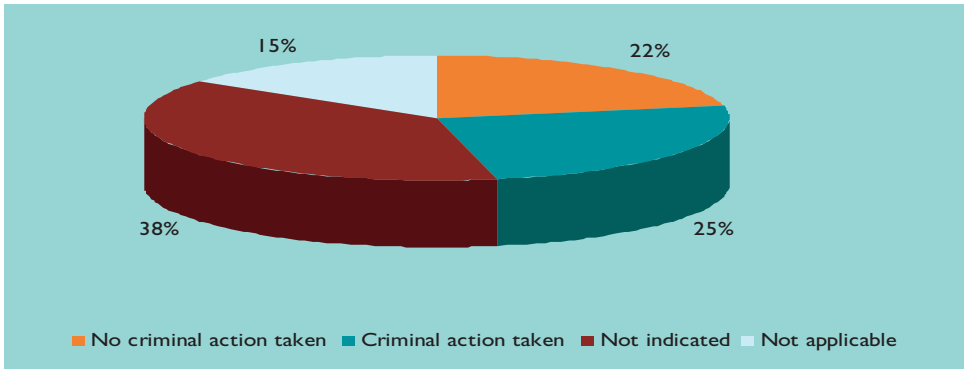


Figure 12: Breakdown of the responses by departments in regard to further action taken against employees

For the 2006/2007 financial year criminal proceedings were instituted against employees in 25% (257) of the cases. In 22% (228) of the finalised cases for the financial year 2006/2007, no criminal proceedings were instituted against employees. In 400 cases (38%) 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 90% of the instances. It is therefore not possible to determine the reasons for not instituting criminal action. In 4 instances employees were found not guilty in the disciplinary cases against them, which could possibly justify the departments not instituting criminal proceedings against such employees.

A breakdown of the types of financial misconduct of these cases as per the definitions in paragraph 3.3 above is reflected in **Table 8** on the following page. It is disconcerting to note that cases involving corruption, fraud and theft were not reported to the SAPS.

Table 8: Breakdown of types of financial misconduct where no criminal action was taken

Type of financial misconduct	Number of cases reported by departments
Corruption	2
Financial Mismanagement	25
Fraud	105
Misappropriation and abuse	65

Type of financial misconduct	Number of cases reported by departments
Theft	31
Total	228

In assessing compliance with subsection 34(1) of the Prevention and Combating of Corrupt Activities (PCCA) Act, 2004¹³, it was found that of the 48 (4.6%) cases involving amounts of R100,000.00 and more, criminal action were taken in 29 (60.4%) instances. In the remaining 19 (39.6%) cases the following emerged:

- In 14 instances where no criminal action was taken by a department, departments failed to indicate the reasons for such a decision.
- In three (3) cases, the charges involved gross negligence. In one of these cases civil action is in the process being taken against the employee.
- In one (1) case, involving an amount of R307,274.58, no criminal action had been taken as there had been no actual loss to the State and the monies were recovered.
- In one (1) case involving mismanagement amounting to R1,000,000.00, the Department of Labour failed to indicate whether or not criminal action was taken.

Following an analysis of cases in the categories “fraud and theft” and “corruption” (refer to paragraph 3.3 above in relation to the types of financial misconduct), it was found that departments indicated in 4 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 three instances mentioned in **Table 9** below.

Table 9: Individual amounts exceeding R100 000.00 not reported

PROVINCE	DEPARTMENT	AMOUNT	AMOUNT RECOVERED	REASON FOR NO CRIMINAL ACTION TAKEN
Free State	Public Works, Roads and Transport	R120,000.00	R120,000.00	Not indicated
PROVINCE	DEPARTMENT	AMOUNT	AMOUNT RECOVERED	REASON FOR NO CRIMINAL ACTION TAKEN
Limpopo	Agriculture	R148,050.50	0	In process of instituting criminal proceedings
	Local Government and Housing	R130,046.26	0	Not indicated
Western Cape	Cultural Affairs and Sport	R126,940.00	R126,940.00	“None at this stage”

In the case of the Department of Local Government and Housing in Limpopo Province, the employee received a salary amounting to R130,045.26 after he had resigned from the Public Service. The amount of R130,046.26 has, as yet, not been recovered from the former employee.

¹³ Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004



Chapter 4

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



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

This section presents a trend analysis of the information reported by national and provincial departments for the period 01 April 2006 until 31 March 2007, as well as information contained in the PSC's reports on financial misconduct for previous financial years. Since the PSC has improved its reporting format over the past six financial year, information would not always be available since the 2001/2002 financial year.

4.1 INCREASE IN FINANCIAL MISCONDUCT CASES

Citizens expect public servants to serve the public interest with fairness and to manage public resources appropriately. Fair and reliable Public Services and transparency in the management of public resources inspire public trust and ultimately contributes to economic growth.

Figure 13 below reflects the number of finalized financial misconduct cases reported during the past six financial years.

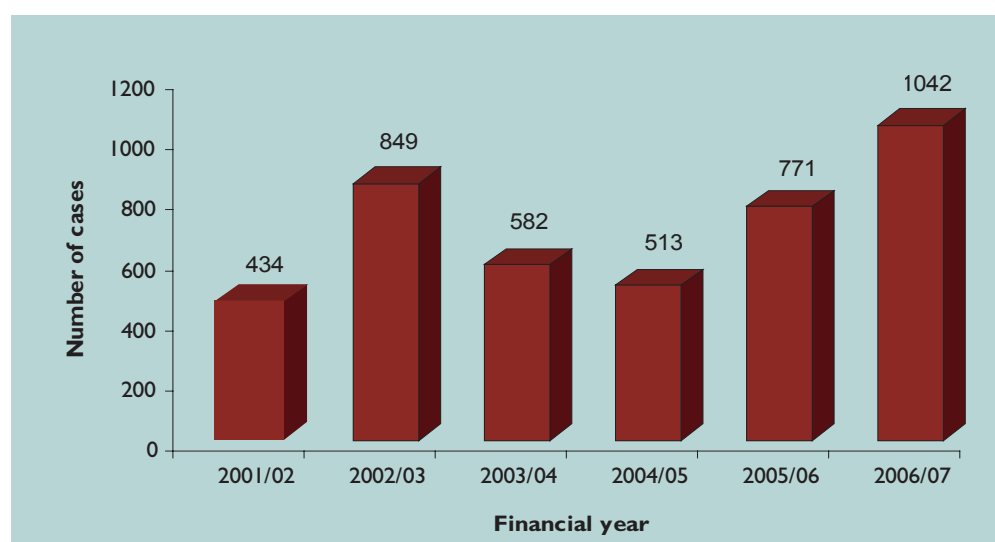


Figure 13: Number of reported cases for the financial years 2001/2002 until 2006/2007

Although all national and provincial departments submitted reports on financial misconduct to the PSC for the 2006/2007 financial year, this was not the case in previous financial years, which made it difficult to determine whether there had been an increase or decrease in the number of cases of financial misconduct. During the past two financial years¹⁴ all national departments submitted reports on financial misconduct to the PSC and during the 2005/2006 only one provincial department, the Department of Education in Gauteng Province, failed to submit an input to the PSC. The statistics provided in **Figure 13** above, therefore points to a significant increase in the number of cases reported to the PSC for the 2006/2007 financial year in comparison to the previous financial years.

"Fraud can be regarded as an iceberg – you may know about the tip, but how big is the iceberg beneath the surface?"

Eugene Sullivan - Public sector fraud. Are you prepared? Survey report 2005. RSM Robson Rhodes in association with Public the guardian

A breakdown of the total number of cases at national and provincial level for the previous five financial years is reflected in **Figure 14** on the following page.

¹⁴ 2005/2006 and 2006/2007 financial years

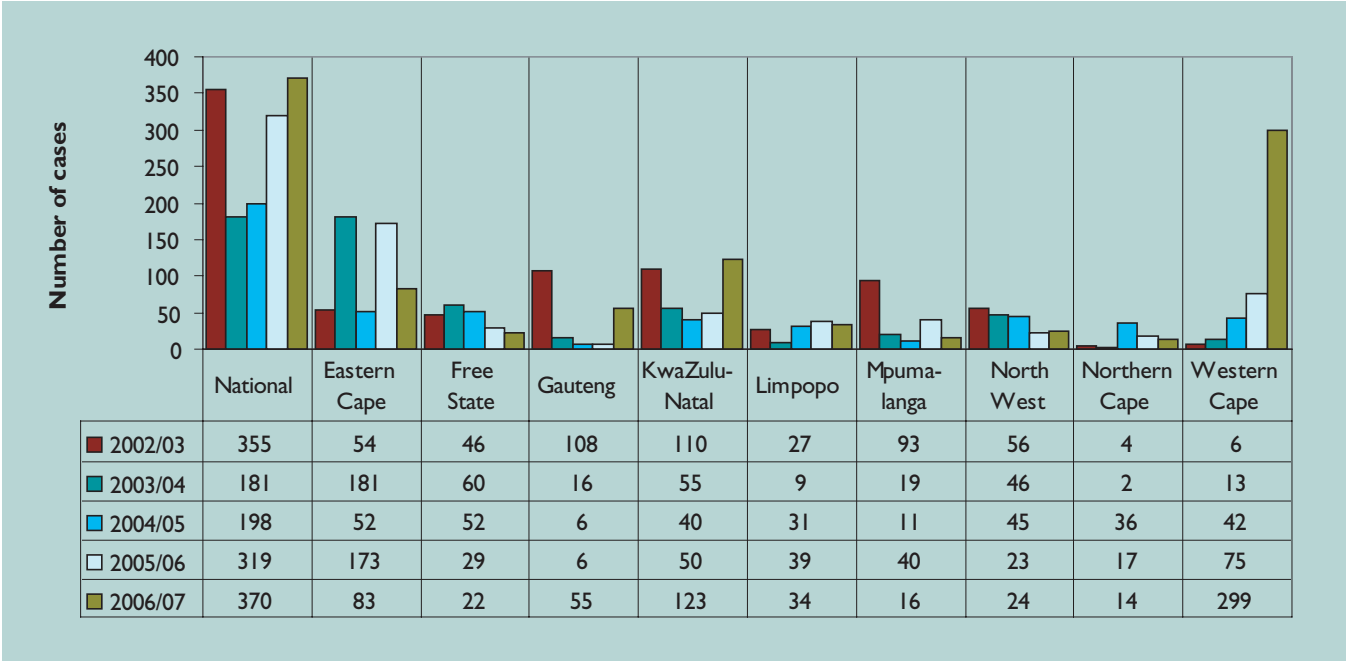


Figure 14: Number of cases at national and provincial level over the past five financial years

Figure 14 reflects that national departments (15%), Gauteng (817%), KwaZulu-Natal (146%), North West (4.3%) and Western Cape (299%) provinces had an increase in cases in the 2006/07 financial year. The overall increase (35%) in the number of cases reported in the 2006/2007 financial year can possibly be ascribed to the concerted effort of Government to deal with corruption through, for example National Anti-Corruption Hotline (NACH) and the Special Investigative Unit in respect of social grant fraud cases. The PSC is responsible for the management of the NACH. The PSC's recent study on the effectiveness of the NACH¹⁵ has shown that it has already achieved tangible results, resulting in disciplinary action being taken against several public servants. If sufficient investigative capacity is created in departments to deal with the cases emanating from the NACH, the trend of an increase in financial misconduct cases will prevail in impending financial years.

The Eastern Cape (108%) and Mpumalanga (150%) provinces on the other hand had substantial decreases in the number of financial misconduct cases. The PSC's study into the effectiveness of the NACH¹⁶, identified capacity constraints by provinces to effectively investigate corruption cases emanating from the NACH. The inability of provinces to effectively investigate cases inevitably results in disciplinary action not being brought against the perpetrators. Consequently, this could be one of the reasons for the relatively low number of cases reported by the provinces.

Financial misconduct, involving acts such as corruption, fraud and theft, should also not only be seen as individual acts by employees, but are the result of inadequate systems and lack of good governance. Although financial misconduct is unlikely to be eradicated completely, strategies should be developed in order to curb the reoccurrence thereof. In this regard, several practical measures to safeguard integrity, transparency and accountability have been put in place in the Public Service. These include financial instructions, documented procedures and a system of internal control. The objective of these is to ensure that timely and effective action can be taken to-

- maximise the recovery of funds whereby financial misconduct has occurred;
- minimise the occurrence of financial misconduct;
- identify the perpetrators and maximise the success of any disciplinary/legal action taken;

¹⁵ Public Service Commission Measuring the Effectiveness of the NACH. 2007
¹⁶ Public Service Commission. Measuring the Effectiveness of the National Anti-Corruption Hotline. 2007

- identify risk areas; and
- identify any lessons learned for the future which can be incorporated into the risk assessment.

The development of fraud prevention plans by departments is another example of a mechanism to curb financial misconduct. Research conducted by the PSC¹⁷, however, indicates that although 75% of the 16 national and provincial departments evaluated during the 2006/2007 financial year conducted risk assessments, only 43.75% of these departments have a comprehensive fraud prevention plan that is based on a thorough risk assessment. This shortcoming could therefore also be a contributing factor to the increase in financial misconduct cases as employees continue to make themselves guilty of financial misconduct and it would appear that departments fail to address the internal control weaknesses. The PSC, therefore, recommended that departments must as a matter of urgency embark on a risk assessment and put risk management strategies in place that complies with the requirements set in section 38(1)(a)(i) of the PFMA.

4.2 INCREASE 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 above). 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, with cases in the category "misappropriation and abuse", being the second highest.

Figure 15 below illustrates a comparison of cases falling in the categories "fraud" and "theft" reported for the past 6 financial years. Although there had been a decline in fraud and theft cases during the 2004/2005 to 2005/2006 financial years, the trend of the previous year (2001/2002) have again emerged in the 2006/2007 financial year whereby fraud and theft cases comprise more than 70% of the overall number of cases reported. This increase can largely be ascribed to the high number of social grant fraud cases reported by departments in the Western Cape.

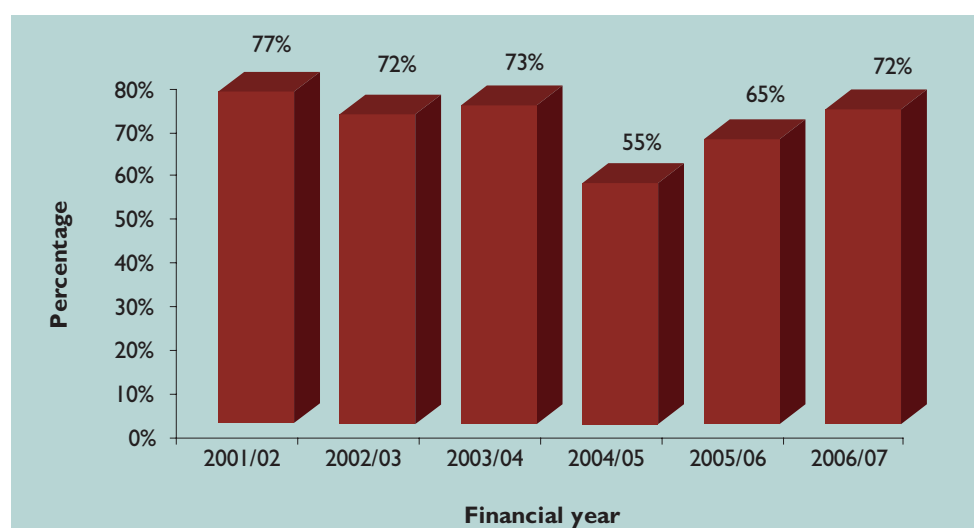


Figure 15: Fraud and theft cases reported for the financial years 2001/2002 until 2006/2007

Due to the high incidence of fraud and theft cases, cases in the other categories have decreased, most importantly cases in the category "misappropriation and abuse". This is evidenced by the comparison of "misappropriation and

¹⁷ Republic of South Africa. Public Service Commission. Draft Fourth Consolidated Public Service Monitoring and Evaluation Report for the research cycle 2006/2007. Pretoria. 2007

abuse” cases for the last five financial years as reflected in **Figure 16** below (in the 2001/2002 financial year the category misappropriation and abuse was not used).

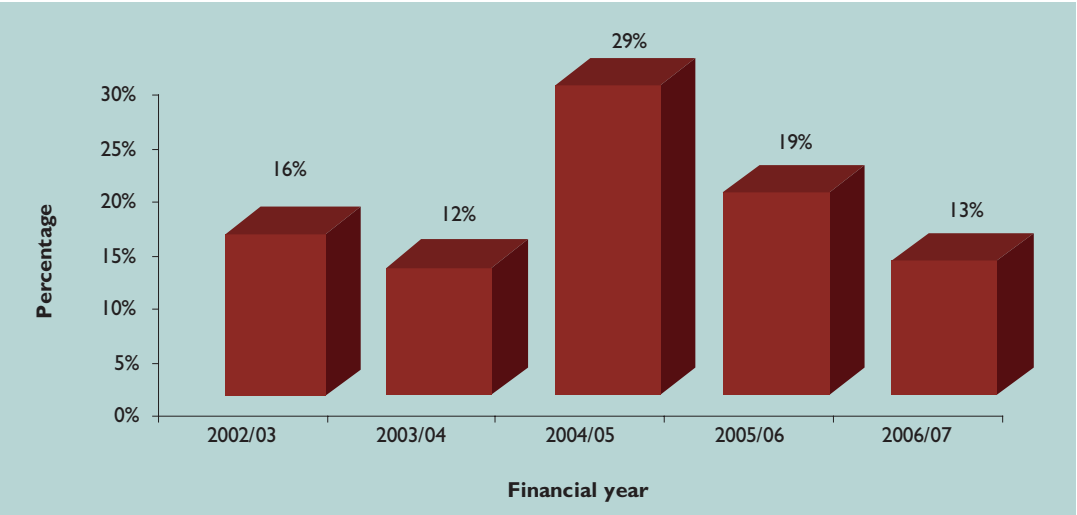


Figure 16: Misappropriation and abuse reported for the financial years 2002/2003 until 2006/2007

Like any other organisation the Public Service is not immune to financial abuse on the part of its employees. The decline in financial misconduct cases relating to misappropriation and abuse could be ascribed to the fact that it is easier for departments to develop appropriate policies and procedures to prevent misappropriation and abuse, as compared to fraud, as fraud entails the deliberate practice to secure unfair or unlawful gain. Furthermore, the monitoring of adherence to the said policies and procedures could also have been one of the deterrents that may have caused a decline in financial misconduct cases relating to misappropriation and abuse.

4.3 HIGH PERCENTAGE OF SMS MEMBERS CHARGED WITH FINANCIAL MISCONDUCT

Figure 17 below provides a comparison with the number of misconduct cases per salary category for the past five financial years (2002/2003 until 2006/2007).

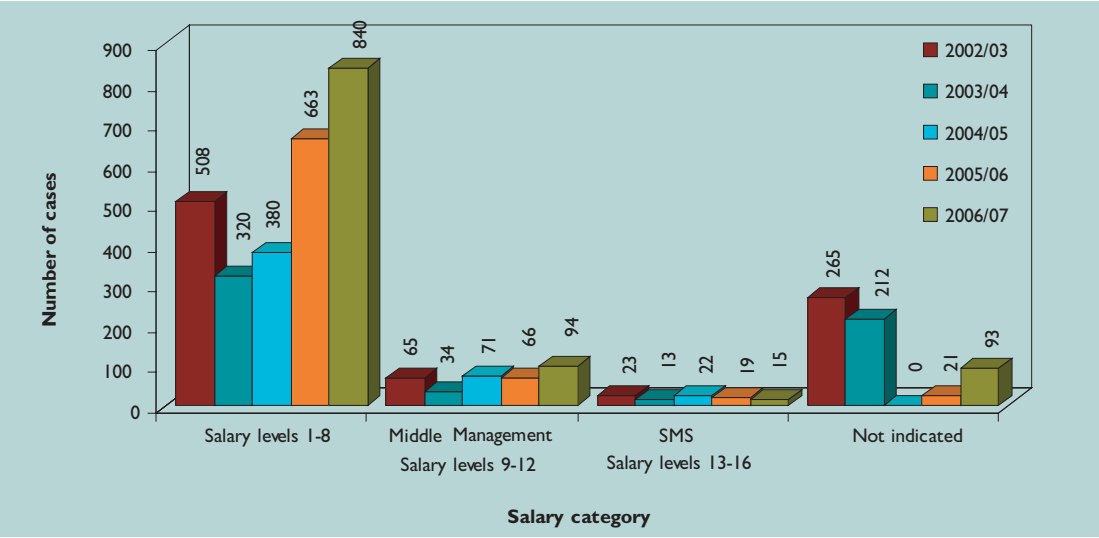


Figure 17: Number of cases per salary category

In terms of **Figure 17** the distribution of finalized 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.

A fundamental part of fraud prevention is sound internal controls that are implemented by ethical employees. While all employees bears the responsibility to implement, monitor and report on the effectiveness of internal controls, SMS members are responsible for setting the tone at the top. Their attitude to internal controls is the most critical element. If management demonstrates little concern about internal controls, then others in the department are not going to be diligent. Considering this, although there has been an improvement in the percentage of cases reported in respect of SMS members from the 2005/2006 (2.5%) to the 2006/2007 (1.6%) financial years, of concern to the PSC is that this is above the percentage of SMS members on salary levels 13 to 15 (0.8%).

If senior management is involved in fraud, the next layer of management may be the most likely to be aware of it. As a result, the audit committee (and other directors) should consider establishing an open line of communication with members of management one or two levels below senior management to assist in identifying fraud at the highest levels of the organization.

- Management Antifraud Programs and Controls: Guidance to Help Prevent, Deter and Detect Fraud
Available from: <http://www.antifraud.aicpa.org/Resources/AuditorsUnderstanding+Programs+and+Controls.htm>

On a more positive note, the fact that disciplinary action is taken against SMS members could point to adequate oversight being in place in departments to detect financial misconduct at SMS level. It is a known fact that while management is responsible for overseeing the activities of employees they sometimes themselves may initiate or participate in fraudulent acts. For that reason, accounting officers, audit committees and members of the executive must supervise the activities of senior management. The fact that for the past five financial years no cases of financial misconduct involving officials at salary level 16 (Director-General-level) have been reported is an indication that heads of departments are serious about promoting an ethical culture in the Public Service. It also bodes well for public confidence in the administrative leadership of the Public Service.

4.4 INCREASE IN FINANCIAL MISCONDUCT CASES IN RESPECT OF FEMALES

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.

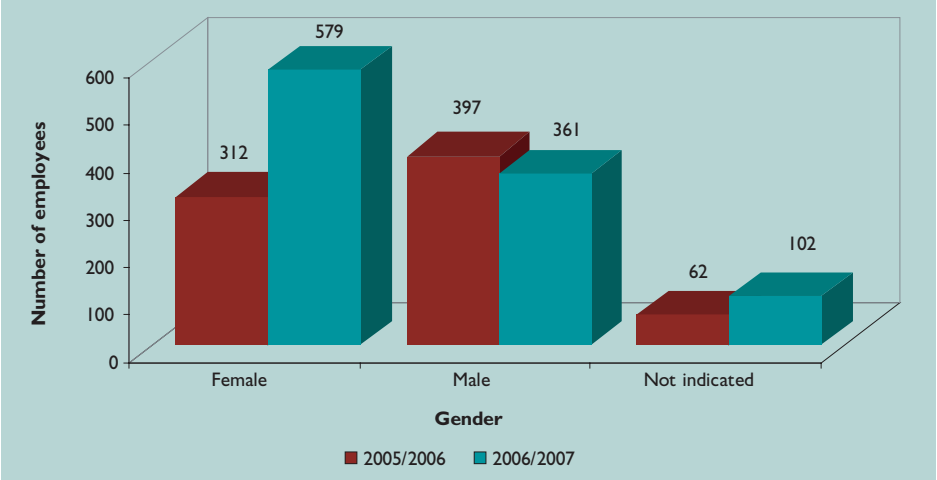
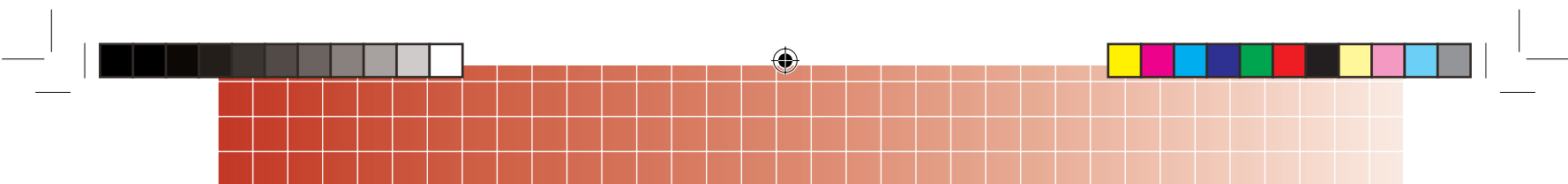


Figure 18: Gender of employees in respect of financial misconduct cases in the 2005/2006 and 2006/2007 financial years



The gender distribution of employees in respect of financial misconduct cases as illustrated in **Figure 18** above differs substantially from the previous financial year. In the 2005/06 financial year¹⁸ more males (52%) than females (40%) committed financial misconduct, whereas in the 2006/07 financial year, more females (55%) than males (35%) committed financial misconduct. It was interesting to note that the social grant fraud cases had a significant impact on the increase in females found guilty of financial misconduct. This could possibly be ascribed to cases relating to child and foster care grants, which are normally accessed by females as caregivers.

Research sponsored by the World Bank¹⁹ argues that where countries adopt specific measures to narrow gender gaps, for example, more equal rights to employment, to education, to health services and to public and political office, they seem likely to gain a range of economic and political benefits including a reduction in corruption. Countries where women have greater rights and participate more in public life tend to have cleaner business and government. Conversely, in South Africa, where the Bill of Rights prohibits unfair discrimination on the basis of gender, and the concerted effort to empower women through various programmes of action by Government, the increase in females being found guilty of financial misconduct is contrary to the research findings by the World Bank.

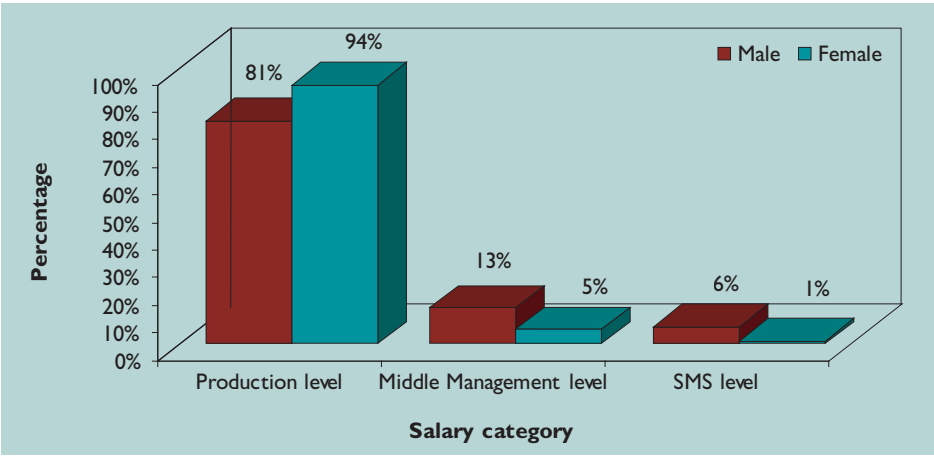


Figure 19: Percentage of cases of financial misconduct in respect of which departments indicated both the salary level and gender of an employee

Figure 19 reflects the percentage of those cases of financial misconduct in respect of which departments indicated both the salary level and gender of an employee. It was interesting to note that 94% of the females who were charged with financial misconduct were at salary levels 1 to 8. The majority of these cases were related to social grant fraud.

4.5 INCREASE IN CASES WITHDRAWN AND EMPLOYEES FOUND NOT GUILTY

Good governance demands accountability, legitimacy and transparency of those holding power and position. If these three values are upheld, then there is less possibility for any individual even to think about financial misconduct. One of the basic principles of public sector organisations is the proper use of public funds. It is therefore important that all Public Service employees are aware of the risk of and the means of enforcing the rules against wrongdoing. Furthermore, ensuring sound values and ethics is a vital part of good governance that supports and respects fundamental democratic values. Public duty involves morality, good behaviour and ethics of an individual. Compliance with ethical standards is required of every public servant as part of his or her terms and conditions of employment.

¹⁸ Report on Financial Misconduct for the 2005/2006 financial year, Public Service Commission, February 2007.
¹⁹ Anti-Corruption Resource Centre-Causes & consequences of corruption (<http://www.u4.no/helpdesk/faq/faqs1.cfm>)



Figure 20 below, provides an exposition of the outcome of financial misconduct cases for the past five financial years.

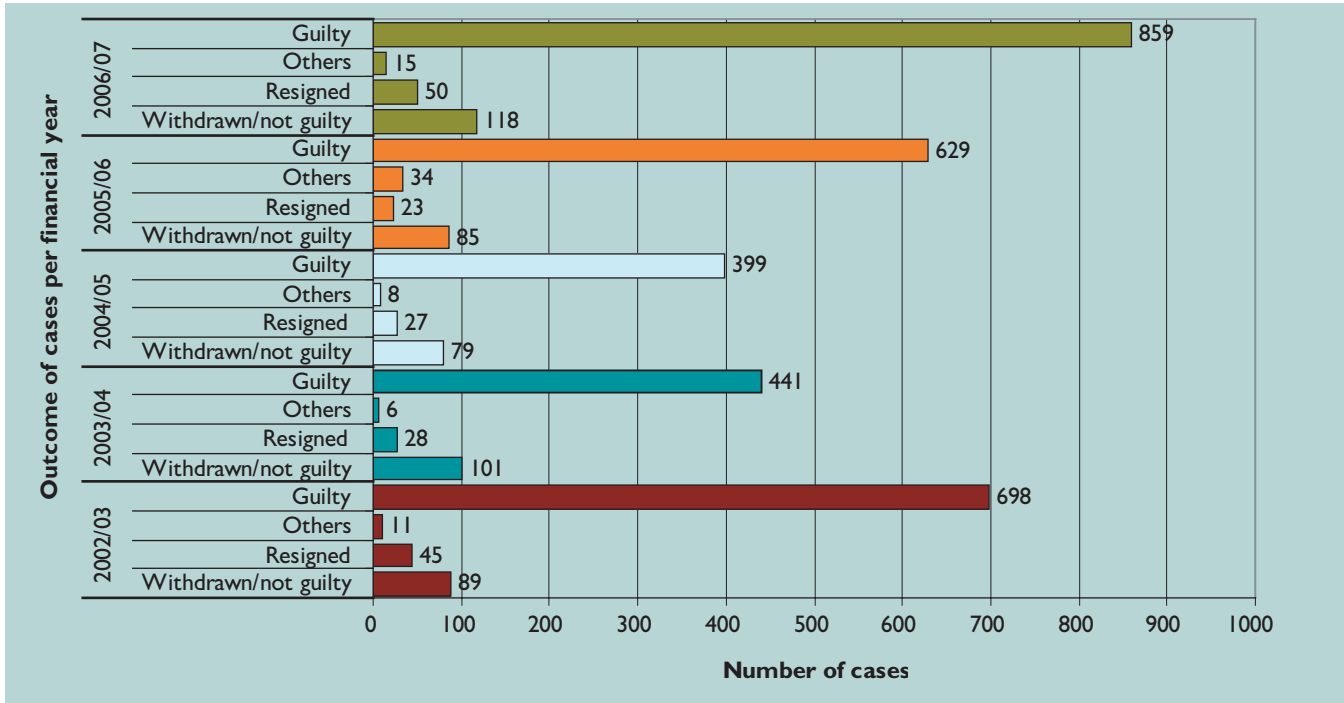


Figure 20: Outcome of financial misconduct cases for the past five financial years

Figure 20 reflects that in the 2006/2007 financial year, the highest number of employees (84%) was found guilty following charges of financial misconduct. If one compares the overall percentage of employees found guilty following charges of financial misconduct over the past five financial years (since the 2002/2003 financial year), the highest percentage of employees were found guilty in the 2002/2003 and 2006/2007 financial year.

A trend emerged during the 2006/2007 financial year during which a substantial number of cases were withdrawn (7%), or the employees were found not guilty (4%). 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 NACH²⁰ 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. This trend therefore clearly calls for the improvement of the investigative capacity of departments to effectively deal with cases of corruption.

4.6 DECLINE IN DISCHARGE FROM THE PUBLIC SERVICE AS AN APPROPRIATE SANCTION

Where fraud and corruption is a disciplinary matter, it must be managed under the legislation, regulations or collective agreement relevant to the particular department, such as the Disciplinary Code and Procedures for the Public Service²¹ in the case of employees employed in terms of the Public Service Act, 1994, the South African Police Service Discipline Regulations²² in the case of employees employed in terms of the Police Act and the Defence Act, 1957, in the case of employees employed in terms of the relevant Act.

By imposing a sanction in disciplinary cases, a department provides assurances to Parliament and the public that systems are in place to respond in a progressive and appropriate manner to instances of inappropriate conduct by

²⁰ Public Service Commission Measuring the Effectiveness of the NACH. Pretoria. 2007.
²¹ Republic of South Africa. Public Service Co-ordinating Bargaining Council. Disciplinary Code and Procedures for the Public Service as contained in Public Service Co-ordinating Bargaining Council Resolution 2 of 1999, as amended.
²² The South African Police Service Discipline Regulations.

Public Service employees. **Figure 21** below indicates the type of sanctions applied by the departments for the past five financial years (2002/2003 to the 2006/2007 financial year).

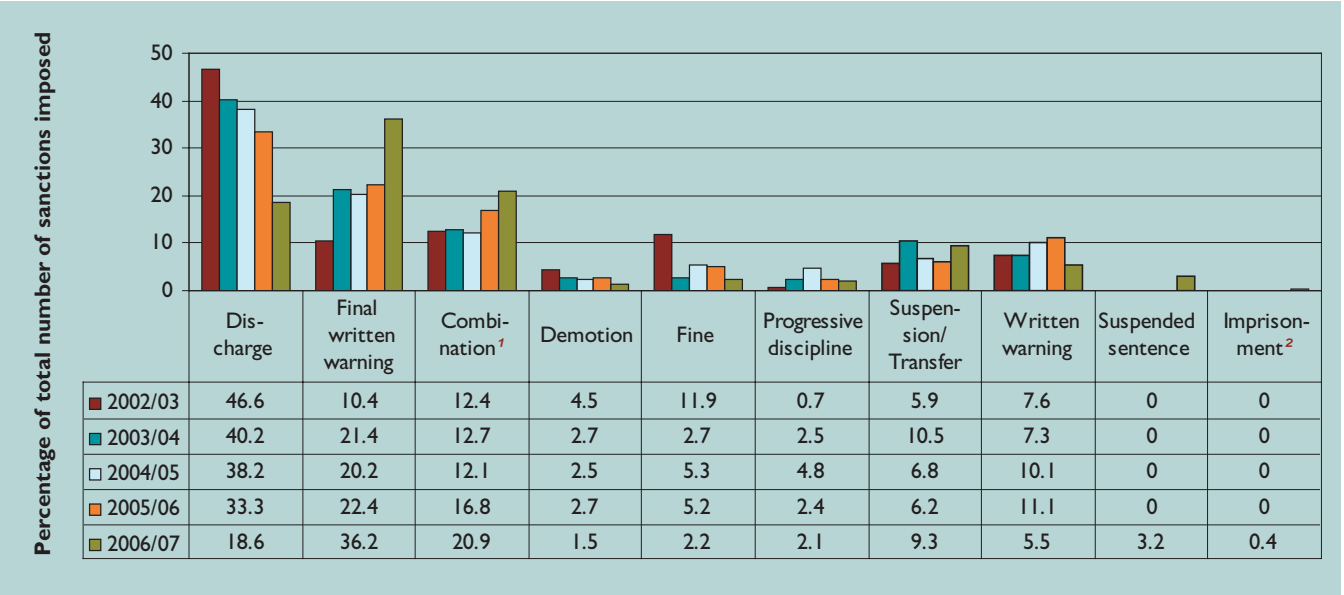


Figure 21: Sanctions imposed in financial misconduct cases over the past five financial years

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 Disciplinary Code and Procedures for the Public Service serves as a mechanism of deterrence, that is to correct employees’ behaviour and is intended to prevent any other employee from engaging in similar actions. The knowledge that disciplinary action may be taken against an employee who transgresses 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 21** above indicates that for the 2006/2007 financial year this trend has changed, whereby final written warnings are the most prevalent (36%), followed by a combination of sanctions (21%). Since the 2005/2006 financial year, a combination of sanctions has been more frequently used.

The decline in the prevalence of discharge from the Public Service as a sanction in response to a finding of guilty on financial misconduct could create the perception with the public that government is more tolerant towards employees who commit financial misconduct. However, it should be taken into consideration that after considering the mitigating and aggravating circumstances of each case, all acts of financial misconduct would not necessarily render the employment relationship as intolerable, resulting in discharge. As a result of the fact that discharge from the Public Service as a sanction to deal with cases of financial misconduct has decreased in the 2006/2007 financial year, there is a need to ensure that these employees who still form part of the employee corps do not make themselves guilty of similar conduct. Although sanctions such as final written warnings and suspension without pay should serve

as a deterrent for employees to engage in financial misconduct, this is by itself insufficient to effectively and sustainably curb financial misconduct. Where more attention is placed on the sanction and not the prevention of financial misconduct, it is unlikely that financial misconduct will be curbed.

Departments should strengthen the ethical competence of its employees by implementing new techniques to institutionalize an ethical culture which supports professional responsibility, self-discipline and support for the rule of law. This should include promoting professional ethics among its employees. The PSC has through its research²³ confirmed that the promotion of professional ethics through Codes (such as the Code of Conduct for the Public Service) can be very effective to the extent that they communicate, both internally and externally, the moral path that employees are expected to tread. They are also important mechanisms through which to build a collective conscience for an organization. They, however, also need to be supported by other measures such as, for instance, training.

Furthermore, on an organizational level, risks associated with these cases of financial misconduct should be identified and sufficient internal controls should be put in place to prevent recurrence.

4.7 INCREASE IN THE COST OF FINANCIAL MISCONDUCT

Table 10 below provides an overview of the cost of financial misconduct for the past five financial years.

Table 10: Total cost of financial misconduct per financial year

Financial year	Financial cost
2002/2003	R 331,213,430.16
2003/2004	R 20,351,101.88
2004/2005	R 120,497,731.02
2005/2006	R 45 649 391.00
2006/2007	R130,615,994.82

Table 10 shows a significant increase (186%) in the cost of financial misconduct from the 2005/2006 to the 2006/2007 financial year.

The activities of the public sector are constantly in the public eye and for this reason when government funds are lost through financial misconduct, it tarnishes the image of the public sector. The cost of financial misconduct in the 2006/2007 financial year has shown a significant increase as compared to previous years. This increase is largely ascribed to two cases involving very large amounts, namely the cases involving R16 million in the National Department of Agriculture and R60 million in the Department of Roads and Public Transport in Limpopo Province. The latter two cases comprise 58% of the total cost of financial misconduct for the 2006/2007 financial year. If one looks at the financial implications of financial misconduct it has to be argued that it has real human cost, in the sense that it ultimately affects the lives and health of people in that public funds are diverted from their real purpose.

To erase the tainted image of the Public Service and address the negative perceptions of the public at large about the accountability of public servants, it is imperative that every Public Service employee realizes his/her obligation and act in an accountable and responsible manner.

²³ Republic of South Africa. Public Service Commission. State of the Public Service Report. Pretoria. 2007.

4.8 LACK OF INFORMATION ON CRIMINAL PROCEEDINGS UNDERTAKEN IN CASES OF FINANCIAL MISCONDUCT

As financial misconduct in the Public Service is invariably harmful to the public interest, the public expects that criminal action be taken against employees that make themselves guilty of such acts. In a study conducted in Canada²⁴ it was stated that research on compliance has confirmed that criminal proceedings are not necessarily the most appropriate – or most useful – first response to instances of mismanagement. In addition to its shortcomings as a deterrent and a tool to modify behaviour, the use of the criminal justice system is costly and slow.

The prosecution of financial misconduct cases is furthermore in a sense an admission of systemic failure and for this reason the Public Service has put preventative measures in place which should not only take the burden off law enforcement, but promote professional ethics in the Public Service. Examples of such measures are the Code of Conduct for the Public Service and the Financial Disclosure Framework for Members of the Senior Management Service. Research conducted by the PSC²⁵ indicates that the intention of these mechanisms is to promote the perception of integrity in government by preventing, for instance, conflicts of interest, before they occur. It also brings a new dimension in the fight against corruption as it can be premised on the notion of keeping honest public servants honest and protecting such officials against corrupt practices.

The figure below depicts those cases where criminal proceedings were instituted against employees charged with financial misconduct for the financial years 2002/2003 to 2006/2007. 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.

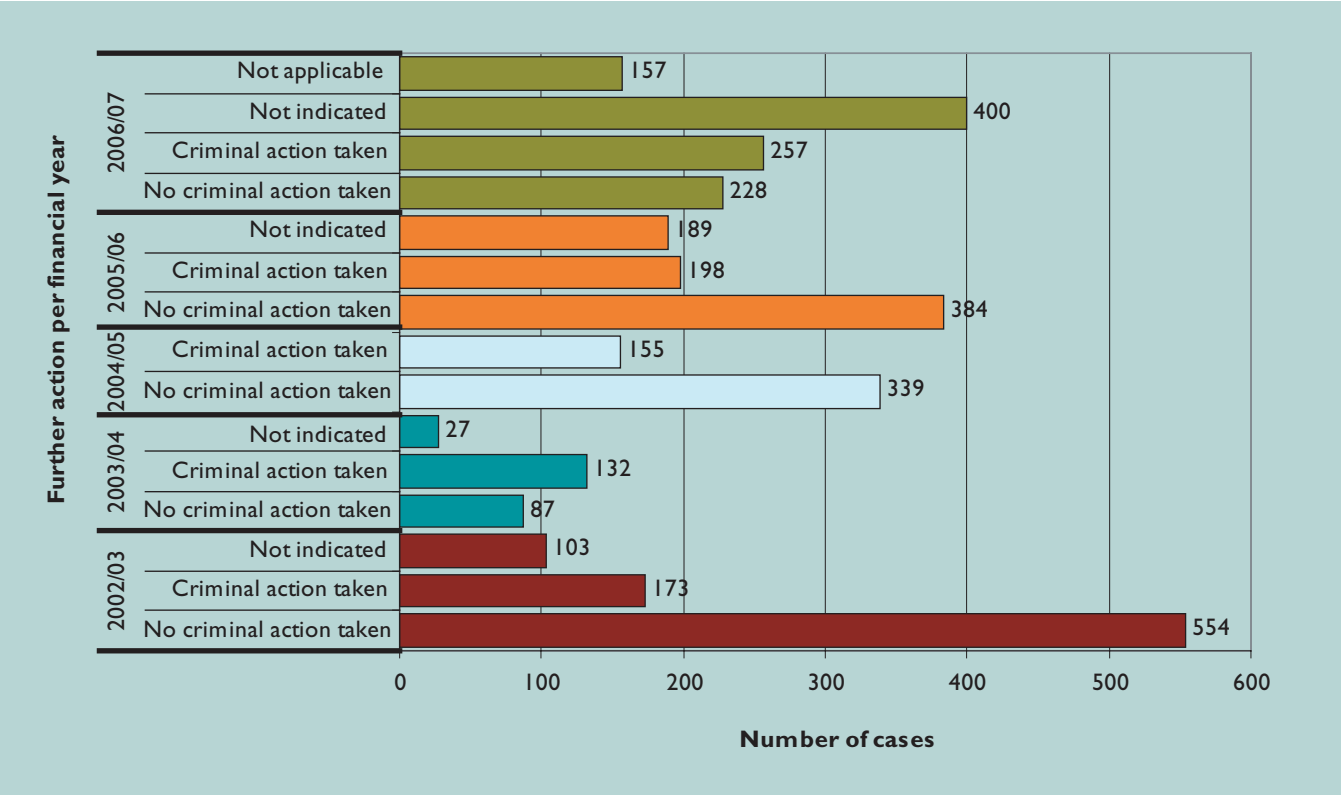


Figure 22: Criminal proceedings instituted against employees charged with financial misconduct

²⁴ The Financial Administration Act: Responding to Non-compliance – Meeting the Expectations of Canadians (<http://www.tbs-sct.gc.ca/report/rev-exa/faa-lgfp/faa-lgfp07>)
²⁵ Public Service Commission. Report on Managing Conflicts of Interest in the Public Service, 2006.

Emanating from **Figure 22** it was determined that similar to the 2005/2006 financial year, criminal proceedings were instituted in 25% of the finalized financial misconduct cases reported in the 2006/2007 financial year. Overall since the 2002/2003 financial year, the percentage of cases in which departments instituted criminal action (31%), as compared to the total number of cases is relatively low. However, due to the fact that departments failed to provide adequate information in this regard, 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

In terms of section 38(c)(i) of the PFMA 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.

Figure 23 below shows the percentage of the amounts recovered by departments versus the amounts not recovered over the past three financial years.

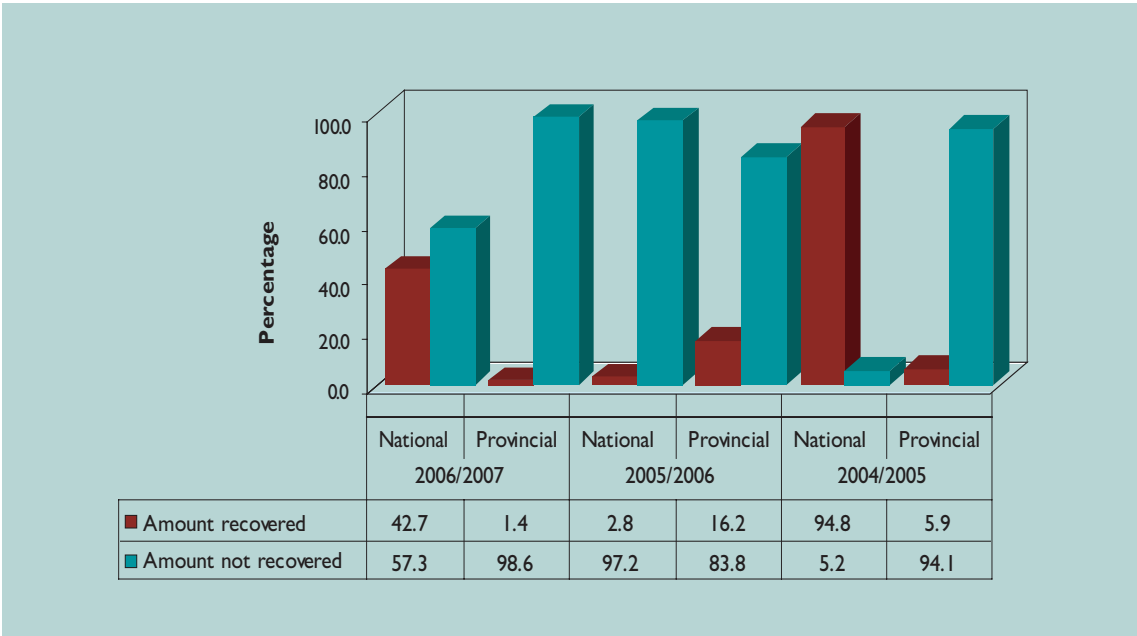


Figure 23: Percentage of the amounts recovered by departments vs the amounts not recovered over the past three financial years.

Figure 23 illustrates that the rate of recovery of the value of the loss and damage as a result of financial misconduct in the Public Service in the last two financial years (2005/2006 and 2006/2007) has been very low. There has been an increase in the overall rate of recovery from the 2005/2006 financial year to the 2006/2007 financial year from 9.5% to 22.1%. However, this figure is well below the overall recovery rate in the 2004/2005 financial year at 50.3%.

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 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 will in the 2007/2008 financial year request departments to provide an update on the rate of recovery in respect of cases reported during the 2006/2007 financial year.

4.10 TIMELINESS, ACCURACY AND CREDIBILITY OF INFORMATION

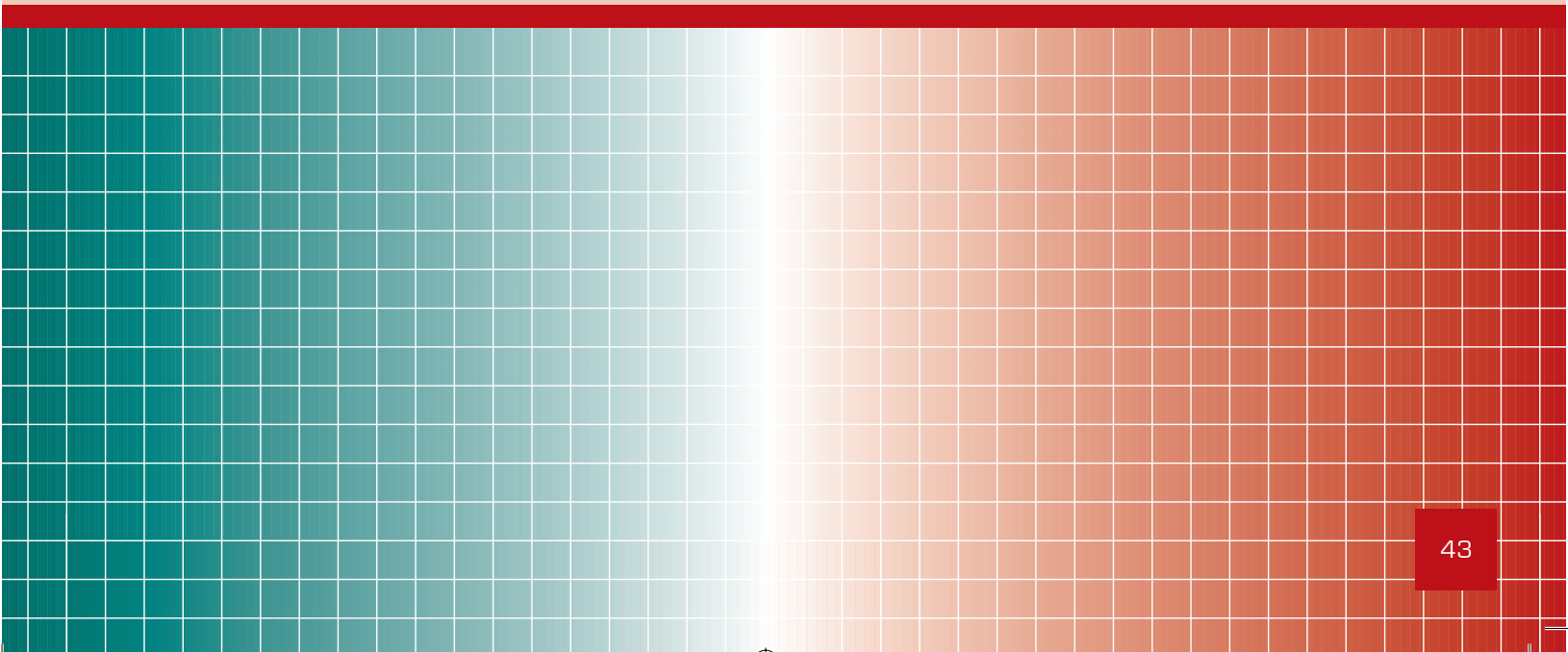
Since the introduction of the reporting requirements on financial misconduct in the PFMA and Treasury Regulations, this is the first financial year that all national and provincial departments have reported to the PSC. Although the increase in the number of departments reporting to the PSC may point to greater accountability, the vigorous follow-up required by the PSC to elicit responses from departments and the poor quality/inaccuracy of information provided places a question mark on the seriousness with which departments regard the reporting requirements stipulated in the PFMA and Treasury Regulations. Furthermore, merely providing the PSC with information is no longer sufficient. Accounting Officers should take responsibility to ensure the timeliness, accuracy and credibility of information being provided to the PSC.

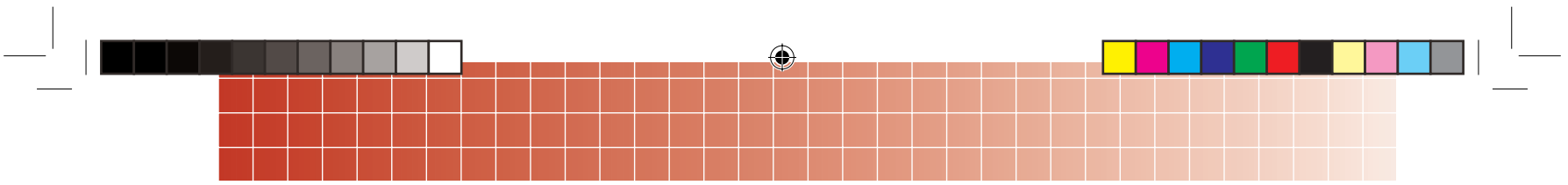
In order to deal with the challenge of timeliness, accuracy and credibility of information the PSC has, with effect from 1 April 2007, requested departments to report on finalized financial misconduct cases on a monthly basis. This approach will enable the PSC to follow-up on reports submitted by departments and to verify the information provided. The PSC will also be in a position to pro-actively inform Accounting Officers of inaccurate information being provided by their departments and where required, also provide departments experiencing problems with the provision of accurate information, with the necessary support in the form of training and/or workshops.



Chapter 5

Conclusion





5. CONCLUSION

Financial misconduct is not a new phenomenon. It is a problem that is widespread and does not only affect the South African Public Service, it is a global problem. But the ability to contain financial misconduct distinguishes the public services from each other. Citizens should be made aware of the cost of financial misconduct and the effect it can have on their socioeconomic and political life. Financial misconduct by public servants impacts negatively on the citizens of the country whose interests they are supposed to serve and safeguard, thus eroding the social capital on which governance and developments are devised. Financial misconduct, amongst others, violates the social and economic rights of the poor and the vulnerable, undermines democracy, retards development, and deprives the people from getting services that are due to them. The money that is supposed to be spent on public welfare, roads, transport, health, education and so on is gradually slipping into private coffers in pursuance of self-enrichment and ultimately deprives the poor of their basic needs.

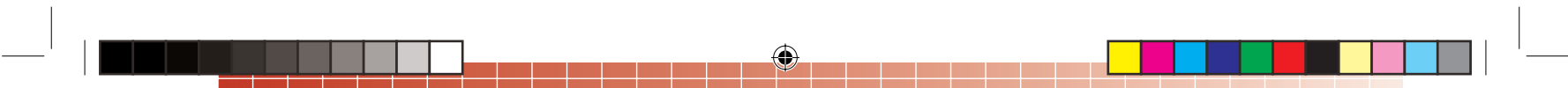
This Overview shows worrying new trends in financial misconduct emerging within the Public Service, such as the increase in financial misconduct cases, increase in the categories “fraud” and “theft”, high percentage of SMS members charged with financial misconduct in comparison to the total number of employees in the Public Service and increase in the cost of financial misconduct. The increase in the number of cases could possibly be attributed to the provision of mechanisms to blow the whistle on corrupt and unlawful activities and the efforts of government to deal with such cases. However, the Public Service should not take too much comfort in the latter interpretation if it is to keep its “eye on the ball”.

This Overview does not contain specific recommendations emanating from the analysis of financial misconduct cases reported by departments for the 2006/2007 financial year. However, the PSC’s comprehensive report for the 2007/2008 financial year will again include recommendations aimed at having a meaningful impact on the challenges faced in the financial misconduct domain.





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.	R 5000,00	The amount of R5 000,00 deducted from the pension benefits owed to the employee.	
Note:	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 2006/07 financial year compared to the 2005/06 financial year?								
	[b]	If there is a trend of financial misconduct cases on a particular salary level, indicate the possible reasons for this trend.								



NOTES

Handwriting practice lines consisting of 20 horizontal gray lines.

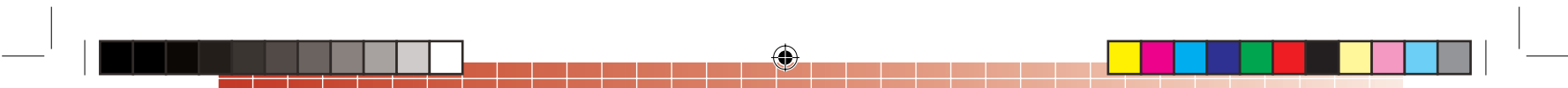




NOTES

Handwriting practice lines consisting of 20 horizontal gray lines spaced evenly down the page.





NOTES

Handwriting practice lines consisting of 20 horizontal gray lines.

