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HIGHER EDUCATION ACT (ACT 101 OF 1997, AS AMENDED)**REPORT OF THE INDEPENDENT ASSESSOR INTO THE AFFAIRS OF THE UNIVERSITY OF FORT HARE, APPOINTED BY THE MINISTER OF HIGHER EDUCATION, SCIENCE AND TECHNOLOGY**

I, **Dr BE Nzimande**, Minister of Higher Education, Science and Technology in accordance with Section 47 (2) of the Higher Education Act (Act 101 of 1997, as amended), publish the Report of the Independent Assessors, Professor Christoffel Brink and Professor Louis Molamu appointed under Sections 44 (1) and 48 of the Act, respectively, on the investigation conducted into the state of affairs of the University of Fort Hare, as set out in the Schedule.

**Dr BE Nzimande, MP****Minister of Higher Education, Science and Technology**

Date:

25/11/2019

Report of the Independent Assessor regarding the University of Fort Hare (UFH)

2019-10-03

Independent Assessors: Prof Chris Brink and Prof Louis Molamu

Financial Expert: Mr Bulelani Mahlangu

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Executive Summary

On 12 April 2019, there was a meeting of nine members (out of a possible thirty-one) of the Council of the University of Fort Hare: four employees of the University, two students, the President of Convocation, the Chair of the Audit and Risk Committee of Council, and a new external member appointed by one of the local municipalities. They declared themselves duly constituted as a meeting of Council, elected the new member as 'Interim Chairperson of Council', and proceeded to take a number of decisions. The main outcome of the meeting was that the 'Interim Chairperson of Council' issued a notice informing the campus community that the Vice-Chancellor had been suspended.

Shortly afterwards the Minister of Higher Education intervened by dissolving Council and appointing an Administrator in its place. Part of the terms of reference of the Administrator was that an Independent Assessment should be conducted into the affairs of the University. We were subsequently appointed as Independent Assessors by proclamation in the Government Gazette of 5 July 2019.

According to our Terms of Reference, the overall purpose of our investigation is to advise the Minister on 'the source and nature of the problems facing the institution, and the measures required to restore good governance and management'. The Terms of Reference are then broken down further into issues such as financial management, human resources, the operations of the Office of the Registrar, and matters regarding the statutory structures. We were also tasked in particular with investigating allegations of misconduct and mismanagement against the Vice-Chancellor.

As regards the source and nature of the problems facing the institution, we have identified various factors.

- a) The problems facing the institution go back a long way. They did not start with the appointment of the new VC in 2017. For the past 10 years a number of reports have indicated that the university is in serious difficulties.
- b) In particular, the financial state of the University has long been precarious.
- c) Students have legitimate cause for grievance. The teaching facilities, laboratories and residences are generally in a very poor state. Some students live in shocking conditions. Maintenance has been entirely inadequate.
- d) Council became dysfunctional and factionalised after the terms of office of a number of Council members had run out in 2018 without these members being renewed or replaced.
- e) Management became embroiled in bitter battles with individuals and 'stakeholder' bodies.
- f) The administrative structures of the University are weak. Basic activities have not been performed professionally. Policies are outdated or not in place.
- g) The socio-economic environment and regional political dynamics contributed to some of the institutional governance and management problems. Inside and outside the university there seems to be a belief that UFH is in the first place an economic resource.
- h) The University runs three campuses: Alice, Bisho and East London. Alice and East London (120 km apart) are both regarded as administrative centers, and some staff teach in both. The overheads of doing so are high.

Any one of the long-term factors could place enormous stress on a university. Together, they produced a time-bomb waiting to explode.

The fuse was lit when a new Vice-Chancellor arrived in 2017. The University had celebrated its centenary in 2016 under the outgoing Vice-Chancellor. It had also experienced the stresses of the national #FeesMustFall campaign. The appointment of a new Vice-Chancellor from the beginning of 2017, as well as the new national dispensation of fee-free education below a certain income threshold, brought an opportunity to make a new start and address the long-standing problems of the University. This expectation was conveyed to the incoming VC at the time of his appointment. However, his efforts in this regard, and the manner of conducting these efforts, soon led to contestation with 'stakeholder' constituencies such as the student political organisations, organised labour and the Institutional Forum.

We offer in the body of our report our narrative and analysis of how the contestation unfolded, and why the Minister eventually needed to intervene by dissolving the Council of the University. However, we can make one general point at the outset.

In our view, the main source of the problems facing the University of Fort Hare was the general disregard of a fundamental principle of governance: the principle, namely, that the role of a governor is to act at all times in the best interest of the institution as a whole, not to act as a 'representative' for any particular constituency or group. In particular, at a university, the role of a Council member, whether internal or external, is to contribute to collective decision-making for the benefit of the entire University, not to seek any advantage, nor try to exercise any supposed autonomy, for any 'stakeholder group' or substructure of the University.

It was the disregard of this principle, whether deliberately or in ignorance, individually or in groups, that led to the necessity for a Ministerial intervention. The problem was exacerbated by ideas of 'co-governance' and even 'co-management' of the university by 'stakeholders', and a somewhat exaggerated idea of the role, the independence and even the autonomy of some structures and post-holders.

As regards possible measures to restore good governance and management, our main conclusion is that there is no quick-fix solution to the problems at UFH. We have tailored our recommendations accordingly, to address not only the symptoms but the root causes of the difficulties at the University of Fort Hare. To implement these, we believe that a recovery period of increased oversight of UFH by the DHET will be required.

We are grateful to all those who participated in our investigations, gave us their time and the value of their views, and conducted us on site visits. We express our appreciation to the University for the support we received, and to the DHET for support and assistance. We give particular thanks to our co-opted financial expert, Mr Bulelani Mahlangu, who conducted the detailed financial analysis and recommendations appearing in our report. Finally, personal and grateful thanks to Ms Tintswalo Taelo for serving as our administrative officer, Dr Phillia Vukea for document management, and Mr Sabelo Radebe for travel and accommodation arrangements.

Prof Chris Brink

Prof Louis Molamu

Independent Assessors
2 October 2019

1. Introduction

We should state at the outset that we regard it as desperately sad that governance at the University of Fort Hare needed to be put under administration, and that an Independent Assessment such as ours became necessary. This is a university with an illustrious hundred-year history behind it of producing leaders for South Africa and the rest of Africa. As is proudly stated on the university website, UFH is 'the only Southern African university to have produced various international heads of states: Nelson Mandela of South Africa, Yusuf Lule of Uganda, Robert Mugabe of Zimbabwe, Ntsu Mokhehle of Lesotho, and Sir Seretse Khama of Botswana'. UFH should be a beacon of transcending the inequalities of apartheid as an academic institution of excellence. Indeed, the motto of UFH is 'together in excellence', and it is a tragedy that this is at present only a vision, not a reality.

Our Terms of Reference, as published in the Government Gazette on 5 July 2019, appear in Appendix B. The methodology of our assessment, and our programme of activities, can be found in Appendix D. We invited submissions, requested information, held interviews with both individuals and collectives, and conducted site visits. We tried to accommodate everybody who asked to see us, and accepted all information offered to us.

As regards the timeframe of our investigation, we have gone back as far as 2009, drawing on the report of a Ministerial task team appointed to assist UFH, and up to but not beyond the date of the Ministerial decision to place the University Council under administration, which was 26 April 2019. Any decisions taken or issues arising at UFH subsequent to that date we have regarded as out of scope.

We can report two positive aspects of the current situation at UFH. First, without exception, staff and students profess pride in and loyalty to the University of Fort Hare. We interacted with many people who are positive about the university, despite its troubles. Students have much to complain of, but as we heard through the SRC, they are in the main focused on basic issues affecting their education. They just want what they are entitled to. Second, despite many challenges, and albeit with some interruptions, the academic programme on the whole has continued, exams have been written, students have graduated, and research has been conducted. It is worth mentioning that, on the evidence we have seen, neither Senate nor the SRC participated in the flurry of accusations and counter-accusations of malpractice that characterized UFH during 2018 and early 2019.

Beyond these two beacons of hope there are many areas of concern. In Section 2 of this report we give a detailed overview of the state of the university, as reflected in other reports and as we experienced it for ourselves. In Section 3 we give a narrative account of how events unfolded that led to the state of administration. Suffice to say here, by way of introduction, that over a period of about a year governance collapsed, management became embroiled in bitter battles with individuals and 'stakeholder' bodies, and factionalism was rife.

All of this unfolded against a background of two institutional abnormalities.

The first abnormality is a systemic administrative weakness. In order for a university to run smoothly as an academic organisation, a number of very basic, quite rudimentary administrative processes

must be in place and functioning. Records must be kept. Policies and procedures must be in place. Data must be gathered. Reports must be produced. Resolutions must be tracked. Information systems must provide usable and reliable information. Maintenance must be done. Health and safety regulations must be adhered to. Facilities for persons living with a disability must be created and maintained. In all these respects, operations at UFH are weak. A report by Ernst & Young (introduced in Section 2.1) rates the maturity level of both governance and finance at UFH as 'rudimentary' – the lowest of five possible ratings. Such administrative weakness has a knock-on effect in terms of management and governance. As the (former) Chair of Council expressed it to us: 'When basic organizational processes are not in place, it exacerbates tension and things fall through the cracks'.

The second abnormality is an endemic culture of fear. In order for there to be space for trust and collegiality in any environment, people need to feel safe. Only when they feel safe will people speak their minds, so that the kind of robust internal debates that characterise universities can take place to good effect in the resolution of tensions. Instead, it became clear to us, UFH had become a university with a pervasive fear factor – fear of actual risk to life and limb. A number of our interviewees would only speak to us on condition of anonymity. It is important to make it clear that this fear factor is not so much a matter of possible reprisals of managerial superiors against subordinates (although such allegations were also made), but actually a visceral fear amongst students and staff for those around them, and how information might be passed on that could lead to physical harm. We heard one interviewee say 'I cannot speak out, I'm a woman living on my own.' We witnessed, in another interview, how some people in the room immediately turned their faces away and stopped speaking when other people appeared on a screen by video-link. As regards the allegations against the Vice-Chancellor, we noticed that those opposed to the VC had no hesitation in speaking out publicly and strongly against him, whereas those who expressed support and even admiration for the VC often did so only after asking not to be quoted by name. It was also brought to our attention that various threats had been made over time against individuals (which were duly reported), and that two staff members of the university had in past years lost their lives in shooting incidents that might have had motives beyond ordinary criminality.

Inevitably, our report is fairly high-level. For reasons of time and capacity we have focussed on the overall purpose of investigating 'the source and nature of problems facing the institution'. We have heard and read many and various allegations and counter-allegations, both general and specific, from individuals as well as structures. Allegations ranged from very particular individual cases, typically accompanied by a mass of detailed but unorganised information, to vague generalities not accompanied by any substantive evidence. All of the submissions were helpful to us in constructing our overall conclusions, but we could not plumb the depths of each and every case, and in some instances we did not consider it part of our mandate to do so. In particular, we could not take up the individual case of everyone who felt aggrieved.

Dealing with the mass of documentation was a problem in its own right. The two extremes were that we either had difficulty obtaining information we wanted, or we were flooded with unsystematised low-level information. A substantial proportion of the documents are undated. We were served with a number of legal opinions on various matters; these often contradicted one another.

Our understanding is that we were requested to take up the task of an Independent Assessment of the situation at UFH because we are experienced academics, and we have accepted and undertaken the task in that spirit. Our respective brief CVs can be found in Appendix C. We are not detectives, or forensic investigators, or prosecutors, or legal experts, and we did not see our task as doing work best left to bodies such as the police, the courts or the CCMA. As per our terms of reference, our recommendations deal mainly with strengthening governance and management, but these are offered in the spirit of advancing the academic enterprise.

2. The State of the University

2.1 Other Reports

Our Terms of Reference essentially concern two overarching questions. The first is 'What went wrong at UFH?', and the second is 'How can it be fixed?' We found that we could not respond adequately to the first question by only considering the period since February 2017, when the current Vice-Chancellor took office. The question of what went wrong since 2017 must be considered against the background of the question 'What was the state of the University at that time, and before then?'

It seems clear to us (and the point was also made by a number of our interviewees) that the problems at UFH go back a long way. We draw this conclusion not only from the interviews we conducted and submissions we received, but also from a number of reports of investigations which have previously been conducted at UFH. We refer specifically to:

- The Report of a Ministerial Task Team led by Prof Anthony Melck in 2009.
- The FastTrac report and recommendations on financial matters compiled by Mr Paul Slack in 2015.
- The Ernst & Young Finance and Governance Report of 2018.
- A Review of the Academic Enterprise by Prof M Ralekhetho and Dr M Gering, emanating originally from a DHET visit in July 2017, with work done during 2018 and 2019.

We extract from each of these reports a number of points which helps to build a picture of the state of the University over the past ten years.

The Melck Report of 2009 begins its Executive Summary by stating that 'The University of Fort Hare's financial position is dire. For all practical purposes the University is bankrupt.' It goes on to express concerns about deferred maintenance, the inefficiencies of the multi-campus model, shortcomings in management information (which is 'poor, *ad hoc* or not available') and deficiencies in the Human Resources function.

We give our own views on the current financial situation of the University in Section 5.3 of this report, supported by Appendix F. For the rest, a number of the concerns of the Melck report in 2009 correspond with our own concerns in 2019. For example, quoting from the Melck Report, we note:

- ‘The poor state of some of the facilities on the Alice campus is a serious long-term risk that warrants attention as soon as possible.’ (Section 6.1.5, page 23)
- ‘the high ratio of support staff to academic staff – and yet still, it appears that much of the work, which should take place, is not happening.’ (Section 5, page 19).

We give our own observations regarding these points below, but in essence little seems to have changed in ten years. We have seen the UFH Management Comments made on the draft Melck Report before its publication, and note from that document that, overall ‘The University management welcomes the report’ and that ‘Many of the recommendations resonate with the ones that have been considered by management and council.’

By 2015 the financial position had not improved. The University was often in correspondence with DHET on its financial travails. For example:

- a) The then-VC wrote to the DHET on 5 March 2015 requesting assistance with short-term funding of R20m (apparently as an advance on the next subsidy payment). The Director-General wrote back on 11 March approving the request, but noted that ‘The university’s financial position is weak’, given that it had an operating deficit of R42m the previous year, and requested a turnaround strategy to be submitted to the DHET.
- b) By 1 November 2015 the VC wrote to the DHET again, requesting further financial assistance. The Director-General responded on 19 November, giving approval for the University to utilise R35 of its earmarked infrastructure grant to obtain short-term financial relief, but commenting that ‘The long-term financial situation of the university is of great concern to the Department’, that ‘I have noted some of the poor decisions made by UFH with respect to financial management in general’, and that ‘you are reminded to provide a turnaround strategy’.
- c) By 31 March 2016 the VC wrote to the DHET again (responding to a letter dated 23 March) acknowledging approval of yet a further advance of R25m against the infrastructure grant – making an advance of R60m in all. The letter concludes: ‘Finally, we have noted, but refute the suggestion of “a deep-seated management failure”’. No reasons are given for this ‘refutation’.

Earlier, in 2014, Council had mandated the VC to contract a company called FastTrac Financial Services to conduct a review of the university’s financial services and to make recommendations to effect savings to alleviate the cash position of the university. The review was conducted by Mr Paul Slack, CA(SA), who submitted an ‘Interim Report’ on 31 March 2015. This was followed up by further interactions with the university, culminating in a ‘Final Report to the University Council, Incorporating Management Responses to date’, dated 31 August 2016. The final report is a different kind of document from the original ‘Interim Report’. Namely, the final report does not supersede the Interim Report, but is rather about the extent to which savings recommended in the Interim Report had been achieved, or not. By August 2016, some good progress had clearly been made with saving money: ‘The implementation of the recommendations has to date resulted in verifiable savings of R64.1 million’ (out of ‘at least R102 million possible’). However, the final report briefly summarises the original findings of the Interim Report (page 6), and goes on to say that ‘at the time of preparing this final report, these findings had not improved markedly’ (page 7). It appears that the root causes of the cash leakages had not been dealt with. We will therefore quote from the ‘Interim Report’ to illustrate the state of the university at that time.

The FastTrac report provides page after page of examples of cash leaking out of the university and recommendations for making savings. The basic premise of the financial overview is that 'UFH is bankrupt and unable to pay its creditors' (item 5.1). We give here some examples of specific issues raised in the report:

- a) 'The university spends a significant amount on transport, mainly due to the fact that academic and other staff members commute daily between Alice, Bisho and East London'. (4.1.9)
- b) 'Double and triple dipping is taking place, where staff members are paid two or three times for the same hour of work'. (4.4.1)
- c) 'There is large-scale falsification of expenses claims'.. (4.4.5)
- d) 'The Advancement Office raises no funding but costs the University approximately R8m per annum.' (4.9.6)
- e) 'The university spent R8,6 million on functions and entertainment' (4.10.4)
- f) 'Expenditure on leased properties is over R100 million per annum. Despite this significant amount ... the university has not provided a complete copy of the lease agreement with Equicent Eastern Cape Properties (Pt) Ltd, which incurs the single biggest item of expenditure in terms of property lease agreements'. (4.11.2)
- g) 'Notwithstanding the missing annexures, the university has been paying out R60 000 000 a year to Equicent since 2012'.
- h) 'The university's strategy of leasing buildings for many years means that UFH has paid many times over for the properties which house its students in East London but enjoys none of the benefits of ownership'. (4.11.10)
- i) 'Fort Hare Solutions ... is bankrupt and owes UFH R10 million'. (4.17.1)
- j) 'The Fort Hare Foundation currently has R114 million in accumulated funds and there seems to be little flow from the Foundation to the University'. (4.17.7)

We draw attention in particular to those quotes above which refer to the very problematic lease arrangements made with a company called Equicent. This is a long-standing issue which has at present still not been fully resolved. We also note that a number of the issues listed above and in the 'Interim Report' are listed again in the final report as not having improved markedly. In particular (page 6):

Staff members, often some of the most senior staff, manipulated the system to put more cash into their own pockets. This was done in a variety of ways, including:

- falsifying expenses claims;
- duplicating claims;
- not recording leave taken;
- double and triple dipping to get paid two or three times for the same hour of work;
- not declaring business interests;
- contracting with the university in contravention of the code of conduct;
- receiving benefits free of charge; and
- not paying tax on benefits.

In 2016 UFH celebrated its centenary. This was also the last year in office of the previous Vice-Chancellor. The current Vice-Chancellor took up office on 1 February 2017. We deal with the

unfolding of events since that time in Section 3 of this report, and continue here with outlining the state of the university.

During the time in office of the current Vice-Chancellor, two further reports give valuable insights into the state of the university. The first of these is a report into finance and governance compiled by Ernst & Young (which consists of two separate documents) and delivered on 31 August 2018. It appears that there had been various calls over time for such a report or reports, and that the E&Y report was finally triggered by a recommendation from the Audit and Risk Committee. Specific aspects of the E&Y report will be dealt with in Sections 4 and 5 of our report, but again we extract from the report some quotes which help to paint a picture of the state of the university.

- a) E&Y assessed both finance and governance at UFH on a five-point scale. In both cases, the assessment came out with a score of 'rudimentary', the lowest possible rating. For finance, 'rudimentary' means 'significant deficiencies and breaks exist across all three value chain drivers' [people, processes and systems]. For governance, 'rudimentary' means 'governance practices are either non-existent or in the very early stages of development'.
- b) For finance: of the 12 sub-processes E&Y assessed, 10 were rated as 'rudimentary', and two at the second lowest level ('developing'). E&Y identified 10 critical control deficiencies, including 'inadequate budget, procurement and cash management practices'.
- c) For governance, E&Y listed 10 themes of critical governance-related deficiencies. These include 'policies and procedures are either non-existent or do not address strategic and operational requirements/needs', and 'Staff culture being resistant to change'.
- d) In the 'Consolidated Findings' of the E&Y Finance Report, regarding a job profiles analysis, 10 findings are listed, the first of which is: 'There are no guidelines relating to day-to-day duties. There is no documented information informing staff of their day-to-date duties. This creates an overlap of roles and responsibilities. There are no formalised KPI's for performance management.'
- e) 'The budget is currently set at a university level and not done per cost centre to drive accountability across various divisions. Thus accountability per cost centre is not possible'. (E&Y Report Level 2 Annexure C)
- f) One of the challenges and constraints the E&Y team experienced was 'difficulty in obtaining relevant information'. (Section 7)

The last two points in particular, regarding lack of accountability and difficulty with obtaining information, fit with our own experience. The point about a general lack of accountability was made to us by various interviewees, both academic and support staff.

Finally, given that UFH is an academic institution, we believe that to understand the overall state of the university it is relevant to quote also from the Review of the Academic Enterprise by Prof M Ralekhetho and Dr M Gering. The version we have seen is dated June 2019, but the Review emanated from a DHET visit in July 2017, which was followed in March 2018 by DHET placing a moratorium on UFH submission of programmes for accreditation.

The report does not mince its words. It begins with a familiar theme: 'One of the striking impressions of the University of Fort Hare is that of under investment: years of badly conceived capital outlay and the lack of care in prioritising and managing the investment return' (page 4). Commenting on the fact that Faculties were asked to produce documents addressing the issues raised by DHET, the authors

comment (pages 6-7) that: 'Deans do not seem to have a feel for their income and expenditure, their break even points, or the economics of higher education. They seem to have little idea of the overhead they have to carry. ... Fundamentally, they do not seem to see this as part of their role. ... The bulk of faculty reports were neither comprehensive nor compelling.'

The General Findings (Section 9, pages 43-49) of the Academic Review make for interesting reading. From the 140 findings we quote a sample, to give the general flavour.

- a) Re Faculty set up:
 - (i) 'Deans pass on rather than delegate. There is a lack of ownership in the academic programme'.
 - (ii) 'There is a surfeit of managers, but an absence of management'.
- b) Re understanding the business of education: 'Poor facilities in particular lecture venues are seen as something that can be accommodated'.
- c) Re caps on student number: 'oversubscribed modules result in venues that are filled beyond capacity'.
- d) Re class sizes:
 - (i) 'There are 102 undergraduate modules with 10 or less students'.
 - (ii) 'There are 56 modules and 26 modules with one and two registered students respectively'.
 - (iii) 'There is a proliferation of academic departments'.
- e) Re new qualifications: 'New qualifications don't have estimates of economic impact, sustainability or return on investment'.
- f) Re graduate supervision and PhD carrying capacity:
 - (i) 'There are people supervising multiple PhDs but who have minimal publication record over the past three years'.
 - (ii) 'There does not seem to be a clear policy on limits for supervision of PhD students and clear mechanisms for creating exceptions'. [Assessors' Note: these two observations on PhDs should be cross-referenced with our comments in Section 2.3 below on the research incentive scheme.]
- g) Re underinvestment: 'The infrastructure seems to be failing students'.
- h) Re efficiency:
 - (i) 'There are too many admin staff. Not enough automations. Many people handling the same transaction. The principle of picking up a transaction and not handling it a second time seems alien'.
 - (ii) 'There [sic] seeming lack of urgency means the same matter is dealt with more than once'.
- i) Re student centred[ness]:
 - (i) 'Building with a student lift and a staff lift. This is a new building'.
 - (ii) 'Toilets locked so students don't have access'.
 - (iii) 'Security guards in multiple numbers but still at minimum wage'.
- j) Re procurement: 'The procurement, contracting and payment process seems irreparably broken'.
- k) Re East London facilities: 'A new shared building (WSU, UFH and Unisa) has been completed. One meeting there threw up numerous design flaws – poor lighting, poor spatial

use, wastage etc'. [Assessors' Note: this is the new joint library building. It has two lifts, clearly marked as one for staff and one for students.]

- l) Re Alice facilities: 'Deferred maintenance evident in the infrastructure'.
- m) Re the interplay between the two campuses: 'We believe having both Alice and East London as the admin centre is of course the worst of both worlds'.
- n) Re general impressions:
 - (i) 'UFH does not evoke the aura it should, given its pedagogical history in the continent'.
 - (ii) 'Staff is non-responsive, on both simple matters and urgent issues'.
 - (iii) 'Student numbers increased but facilities not kept up'.
 - (iv) 'Claims of students squatting'.

2.2 Site visits: Infrastructure and Facilities

We have quoted from the four reports above at some length because they provide useful benchmarks for comparing our own observations during the period of our investigations. Of course there is nothing like first-hand experience, so we also conducted a number of site visits, chosen according to what we heard in interviews.

One of the first interviews we conducted was with the SRC, who told us that among the greatest long-term frustrations of students were poor teaching facilities and inadequate accommodation. Accordingly, we set aside time in our schedule for site visits, without necessarily informing staff ahead of time of these visits. Both in East London and in Alice, we asked the students to show us examples of what they had complained about.

The student facilities we saw ranged from basic but adequate to very poor. Even taking into account that of course we could not see everything, and that we had asked the students to show us the worst, not the best, of what UFH offered them, some of what we saw is shocking. In the residences we saw students living four to a room meant for two, with two of them sleeping on mattresses on the floor, in old prefab buildings. This takes place under university auspices, with the students paying full fees for accommodation. We also heard reports of students squatting in the residences, paying 'rent' to other students. We saw student rooms without an outside window, and no ventilation. In an environment known to students as 'Never Mind' we saw a stand-alone dilapidated one-room structure which houses a student with a disability. Some of the toilets and ablution facilities we saw are so bad that conditions are degrading, and might constitute a health risk. Many students prepare their own food in their rooms, on cooking facilities that clearly are a health and safety risk. Where cooking facilities are provided, they are either not enough, not working, or not clean. We did not see any evidence of efforts at meeting the needs of students living with a disability. Students informed us that in the Nursing Sciences Building (see the next point below) one such student has to be carried up and down the stairs daily.

The university is well aware of the shortage of student accommodation. For example, the VC raised the issue in his report to Council of 8 December 2017, and Council proceeded to consider problems of procuring student accommodation. We would note in addition, however, that it is the quality, not

only the quantity, of student accommodation that should concern the leadership of the university. The students informed us that the VC is aware of the state of accommodation and teaching facilities. As regards teaching facilities, what we saw was inadequate. The university has more students than its facilities can cope with. Students told us that they often have to sit on the floor or in the aisles of a lecture room, either because the chairs are broken or because there are simply too many students in the room. We took the liberty of briefly interrupting a few lectures, and by doing so verified this statement for ourselves. In Alice, the teaching labs for chemistry and physics appear to be trapped in a time warp from decades ago, with inadequate teaching materials, both in quantity and in quality. The agronomy lab is a small room with tables cluttered with soil samples, and no indication of how teaching can actually take place in it. The glass houses are broken. In East London we saw a large computer lab where all the computers on one side of the venue were out of action; our student hosts told us that this had been the case ever since they enrolled at the university.

Regular scheduled maintenance seems almost entirely absent. The Nursing Sciences Building in East London provides a good case study. This building was constructed (about 10 years ago, we were told), with the good intention of giving UFH an exemplary green building. But it does not work. The large front entrance has had to be locked for safety reasons, so all users have to enter at the back. The design is such that the building has air vents in the floor, but there is no air-conditioning, so it is freezing in winter. Neither of the two elevators, students told us, has worked for the past two years. During our site visit the toilet designated for persons with disabilities was used for storage of cleaning materials, with its washbasin blocked and half-full of dirty water. There was a large glass partition missing above the staircase, creating a real and present danger of someone falling down the stairwell. Birds enter into the ceiling of the auditorium, and the students below might find bird droppings falling on them during lectures. The construction of the building is such that there are very large glass panels facing the street outside, but no way to access these panels from the inside. Birds then get trapped behind the glass, and die there, and there is no way to remove them other than to break the panels. In consequence, each of these voids has a collection of dead and decomposing birds lying behind glass, clearly visible from the street outside. It creates a terrible impression of what was supposed to be a signature building.

Both in Alice and in East London the overall impression of the campus is of neglect and decay. The campus is littered with old and broken pieces of furniture (chairs, beds, mattresses) which have clearly been standing or lying around gathering dust for years. Nobody seems to care, or to do anything about it. Particularly in Alice, there is litter all over campus, but no rubbish bins. In East London, where many students walk quite a long distance to lectures, there is exactly one outside tap where students can drink water, otherwise they have to source drinking water in the toilets. The small campus in Bisho is in better shape than those of Alice and East London, but even here the first signs of neglected maintenance can be seen.

Various members of staff, both in interviews and in submissions, raised similar frustrations as the students regarding poor infrastructure and lack of facilities. One academic has been trying to get the Maintenance Department to fix the lift in their building for more than a year. When we asked a Demonstrator in a Physics Lab whether they had enough equipment for teaching purposes they just laughed at our naivety.

Without having made it a particular point of investigation, we could not help noticing that there are transgressions of basic health and safety regulations all over campus. Firehoses might be blocked with rubbish or cleaning equipment. Fire doors might be locked. Railings might be missing from staircases. Electric wires might be exposed, and hanging loose. Glass windows might be broken, with loose shards still in place.

2.3 Interviews: The Work Environment and Campus Culture

As part of our assessment we conducted more than two dozen interviews, with individuals and with groups. The primary purpose of these interviews was to fulfil our Terms of Reference, both general and specific. However, the interviews also served the purpose of broadening our understanding of the work environment and campus culture. We could triangulate between what we heard in interviews, what we read in the many documents we were served with, and the various observations we made and interactions we had during site visits.

We believe that most staff members and students of UFH go about their daily business quietly, competently and in a dedicated manner. We have no interest in doing any finger-pointing to demonstrate the contrary. None the less, we must report that on our observations there is a problem with the work culture at UFH. Whatever is done, is done laboriously. Inefficiencies are rife. There is a tendency to overcomplicate matters. There does not seem to be a culture of decision-making, nor of taking responsibility, nor of being held accountable. If a door needs to be opened, it seems that someone else always has the key. If a decision needs to be taken, it seems that someone else always has to sign. When something must be done, the first thought seems to be about a procurement exercise. If someone wants a cup of tea, caterers must be called. When information is requested, someone first has to compile a report.

All these points can be cross-checked against the four reports dealt with in Section 2.1 above. In addition, we give a few examples from our own experience.

- a) As regards inefficiencies: As mentioned above, both in Alice and in East London, the campus is littered with old and broken piece of furniture which have clearly been standing or lying around gathering dust for years. All it would take to improve the bad impression created by all this useless clutter is for it to be removed to the rubbish dump (or if possible to recycling). When we enquired about why this simple remedy was not applied we were told that 'there is no disposal policy in place.' We had a similar experience when visiting the Transport Section. A dozen or so broken-down vehicles have been standing there for years, but they can apparently neither be fixed, nor sold, nor scrapped, for lack of policy. In the meantime these useless vehicles are duly licenced every year, at some cost to the university.
- b) As regards overcomplicating matters: Where and when policies are actually in place, it seems that they easily become another reason for inaction. For example, when we visited the on-campus clinic, the duty nurse told us that the Supply Chain Management (SCM) Policy is an obstacle for them in getting certain drugs, because there is only one supplier and the SCM policy requires three different quotes. A similar complaint came from the Dean of Research, who has

over a period of months repeatedly tried to effect payment of promised UFH support for an international conference, only to be told that payment cannot be effected in the absence of three quotes. The submission we received reads: 'This should have been a very simple matter of paying a small amount from UFH towards an academic event. Instead, it has degenerated into a puzzling blockage that prevents the most mundane research collaboration. ... It is not entirely unusual to spend this much time on something that should be resolved in a few minutes.'

- c) As regards information: most universities will have readily available a small booklet titled 'Facts and Figures', or 'Profile of the University', usually pocket size, with basic information such as the number of students, the number of staff, a breakdown of these numbers into different categories, some top-line financial information, and so on. When we asked for such information, it seemed to take administrators by surprise. We had to ask very specific questions, wait quite a long while, and then eventually were served not with top-line summary information but with reams of unsystematised low-level information. When we asked a simple question about how many academic and support staff the university has, the question went from us to the Registrar, from the Registrar to the CFO, from the CFO to someone else, who was too busy at that time to compile a special report. We eventually received the numbers about three weeks later (and they did not quite match the numbers later supplied by the CIO).

We were often told that the university lacks resources – in particular that there is a shortage of support staff. But the staff numbers, when we eventually obtained them, showed that every year over the past four years more than 70% of the staff complement were support staff, and fewer than 30% were academic staff. Even taking into account that the University employs its own cleaners, gardeners, caterers etc, this is a very high ratio of support staff to academic staff. (The same point was made in the Melck Report of 2009.) We do not have sufficient evidence to draw conclusions as to where the real problems lie with 'lack of resources', but we are not persuaded that lack of support staff is the main problem.

The local environment also plays a role in campus culture, particularly in Alice. For good historic reasons, there is a strong sentimental attachment to the idea that Alice is the main campus of UFH. For example, in the IF Minutes of the meeting of 28 May 2018 (item 3.11) the Chair of the IF cautions that 'the University should guard against changing East London into the main UFH campus and make Alice a satellite campus'. However, Alice is a very small town, and hardly any academics or senior support staff live there. In consequence there is a cheek-by-jowl interaction between students, workers and the local community, manifesting itself in demands for jobs, procurement opportunities and tenders to go to the local community – not just as an opportunity, but as a right. The risk and reality here is that the University is the only major source of such opportunities, of which there is a desperate shortage. We note, for example, from the Minutes of an IF meeting on 14 March 2017, a view that the Supply Chain Management Policy should include a clause 'that would make it possible for local companies to get opportunities from UFH', and that companies with a contract from UFH 'should spend 10% of their contract on subcontracting local SMEs'.

The downside of such a close town-and-gown relationship is that it can become exploitative. We are very well aware of the strong movement in higher education globally for universities to develop a 'sense of place' and engage with their local communities, and we are supportive of this general trend. The situation of UFH in Alice, however, does not fall under the definition of engagement as we

understand it, which is premised on *academic* engagement with civil society, on the basis of areas of strength in research and teaching. Rather, it seems that there is an exaggerated sense of ownership of the university by the local community, not so much as an academic institution, but rather as an economic resource to be tapped to maximum effect.

Indeed, there are disturbing signs of UFH being viewed as a kind of cash cow that everyone is entitled to milk. The FastTrac report discussed in Section 2.1 above (in both versions, 2015 and 2016) lists some examples, and we add a few more from our own observations.

- a) In the South African higher education context, in particular given the recent #EndOutsourcing campaign, there is an understandable demand for insourcing of service providers, not least at UFH. However, there is a limit to how much of this the university can bear, not just financially but in terms of the academic culture. As mentioned, the ratio of support staff to academic staff is already very high. The figures we were given covering the past four years are as follows:

Staff	2016	2017	2018	2019
Academic	410	417	452	442
Support	1,128	1,230	1,234	1,116
Total	1,538	1,647	1,686	1,558
Ratio of Academic to Support Staff	27:73	25:75	27:73	28:72

- b) At UFH there is provision for senior staff (Deans and up) to be supplied with a fully-serviced car with unlimited fuel. Given the two-campus situation, and the constant commuting between Alice and East London, provision of vehicles may well make sense in principle. Indeed, it is our understanding that all staff who need to commute between Alice and East London may put in a mileage claim if they use their own vehicle for work purposes. The key phrase, however, should be *for work purposes*. For a university with such financial challenges as UFH it seems very generous to allow senior staff to use university-purchased cars for private purposes, with no limit on use and all expenses paid. We were given a list of 19 vehicles assigned to senior staff in this manner, including 5 Mercedes Benzes and a Jaguar.
- c) We were made aware of a case where a serving member of Council invoiced the university for services rendered (on the recommendation of a member of management, we were told). We checked, and found that the invoice was received, but not paid.
- d) In the academic sphere we also found some perverse incentives. For example, the Research Incentive Policy allows substantial payments for research outputs to be made to academics – not into a research account, but into their personal bank accounts, on top of their regular salary. For example, an academic who has supervised a PhD candidate to completion is paid R60,000 when the candidate graduates, and likewise a payment of R20,000 is made upon graduation of a Master's student. The university has paid out more than R86m in

research incentive money into personal bank accounts since the beginning of 2014. Currently, the UFH research income from outputs is about R45 million p.a., of which about R18m p.a. is paid out directly to researchers. In other words, of the order of 40% of the university's output-based research income goes into the private bank accounts of academics. Fourteen professors have each been paid extra income of more than R1m in this way since 2014. The highest amount paid out to an individual over this time is R2,64m. The risk of such direct payment of research incentives is obvious: that academic quality may be sacrificed in order to increase quantity and throughput. We note, for example, a numerically impressive increase in PhD graduates at UFH over the past 10 years:

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
PhD graduates	12	34	37	46	48	55	66	80	106	149

This output of PhDs comes from an academic staff complement with a headcount of about 450, of whom at present only 221 have PhDs themselves. We also noted a number of cases of PhD students graduating within two years from first registration. In fact, there was a discussion in Senate (Minutes of the Special Senate meeting of 27 March 2018, item 6.1 on the 'issue of completion of PhDs within four full semesters', from which it appears that some of these 2-year PhDs may have been part-time students.

Finally, we must mention the 'fear factor' on campus. As one interviewee after another affirmed to us (on condition of not being named), people are afraid of each other. Students wrote angry letters to the Minister under the joint banner of the Progressive Youth Alliance (the PYA, which consists of the ANC Youth League, the Young Communist League and SASCO), but tensions between them become apparent once you speak to individuals. A senior student spoke to us in support of the Vice-Chancellor, making it clear that they would never dare to do so publicly. Staff speak with bated breath of 'the stakeholders', which apparently means the labour unions and the student organisations, and withhold their opinions for fear of being named, which to us indicate fear of reprisals. As already mentioned in our Introduction, there is a fear that such reprisals may ultimately mean actual bodily harm. We quote again the female employee who said 'I cannot speak out, I'm a woman living on my own.' We note that a security company had to be urgently engaged to provide bodyguards for the Vice-Chancellor, after a professional security risk assessment. We have also seen sworn statements of threats being made over the phone or in conversation, of cars being forced off the road, and of shots being fired.

3. Narrative of the events leading up to the Ministerial Intervention

In Section 2 we outlined, on the basis of the Melck Report of 2009 and the FastTrac reports of 2015-16, how UFH has struggled with financial issues since 2009. The extent of these problems can be seen from the fact that by 2015-16 the university had to appeal to the DHET on a number of occasions for short-term bridging funds, and the concerns expressed by DHET about financial

management. Before that, the university had also entered into the highly problematic Equicent contract, a matter which has still not been fully resolved.

Moreover, the university's problems during the years 2009-2016 were not only financial. Maintenance was not done, since there was no money. There were difficulties with senior staff who needed to be disciplined or suspended (we elaborate on this point in Section 5.4). The then-VC's term of office started with a major strike in 2009. He informed us in interview that the relationship between management and organised labour was often tense – sometimes as a consequence of disciplinary action against senior staff. The university had hoped to have a major celebration of its centenary in 2016, but the event was overshadowed by the difficulties and disorder of the national #FeesMustFall campaign. During that campaign one of the university buildings in Alice was burnt down, and the ruin has remained untouched since then.

Against this background, it is understandable that when a new VC arrived, he would be expected to lead the university into an era of clean and efficient administration. The Chair of Council informed us in interview that the VC was indeed given a very clear message in this regard. However, there were ominous signs of opposition from the outset. The VC took up office on 1 February 2017, and a new Chancellor also took up office around that time. The university arranged for a joint inauguration ceremony, which could have been a symbolic new beginning, and a sign of hope for the future. Instead, the ceremony was disrupted by striking NEHAWU members, in scenes which one of our interviewees described to us as 'the most shameful event in the history of Fort Hare'. In a telling comment, another one of our interviewees said that 'The new VC had not been anointed by the so-called stakeholders'.

Amongst the challenges facing the new VC was the composition of his senior team. The contract of the DVC:AA expired in December 2017, and was not renewed. We were informed that there had already been some difficulty when this particular DVC was first appointed: apparently the university unsuccessfully tried at the time to rescind the offer of appointment after it was made. The DVC:IS had only been appointed in mid-2016 (after the previous DVC:IS resigned during a disciplinary case against him), but resigned in December 2017, apparently citing difficulties in working with the VC. The HR Director resigned during a disciplinary process against them, and the Dean of Students resigned when it came to light that they were facing criminal charges. We return to these matters in Section 5.4.

During late March 2018 something happened which was to have major consequences: an SMS was sent to the whistleblower centre alleging that the Vice-Chancellor was in a 'romantic relationship' with his Office Manager, had failed to declare this as a conflict of interest during her appointment, and had subsequently improperly influenced salary adjustments for her. We deal with this matter in Section 6.1.

From mid-2018 onwards tensions increased markedly. There was an 8-week long strike by NEHAWU; we are told it was accompanied by violence and destruction of property. During this time the allegations regarding the VC's Office Manager started to appear on placards, as did the slogan #VCMustFall. It was also during this time that the Registrar wrote to the DHET regarding the fact that the terms of office of five members of Council would expire in October 2018. Without having

consulted the Chair of Council, the Registrar proceeded to recommend to DHET that none of these members should be re-appointed, and asked 'that the Minister provide us with five new Council members with preference to them residing in the Eastern Cape Province'. In our view such a unilateral action by a Registrar would be an offense which warrants consideration of dismissal. However, when we asked the (by then former) Registrar about it during interview, he maintained that writing such a letter was not only correct, but it was part of his job, since 'it is actually the Registrar who runs the university'.

Council had long had difficulties in having quorate meetings, due to two factors. One was poor attendance by some Council members. The other factor was structural, namely the statutory requirement that there should be at least a 60:40 ratio of external to internal Council members at every meeting. However, the numbers made it very difficult to meet this requirement. According to the Statute at the time, Council consisted of 12 internal members and 17 external members, plus the possibility of a further two co-opted external members. (To complicate matters, the Statute counted the Registrar as well as the co-optees as members of Council, but added that they may not vote.) At full complement, then, Council would have 31 members, of whom 19 would be external, which is 61% of the membership. The practical consequence is that if only one external member did not turn up for a Council meeting (which frequently happened) Council would be inquorate. Despite this, Council somehow seemed to have met for years without any great difficulty.

After October 2018, however, the legitimacy of Council membership and Council meetings rapidly became a major issue. One reason was that with the expiry of the terms of office of 5 members it was now technically impossible for Council to have a quorum. Moreover, Council found itself a catch-22 situation: it needed new or re-appointed Council members in order to be quorate, but it could not take decisions about membership while it was inquorate. A second difficulty was that the term of office of the Chair of Council (as Chair) had also expired. DHET was aware of the situation, and had received assurances that the university was trying to expedite decision-making regarding new renewal or replacement of Council members. In the meantime, however, tensions were rising on campus.

Another factor that comes into play at this time is that the Institutional Forum (IF) and Convocation both received new leadership, with the leaders of NEHAWU and NTEU becoming Chair and Deputy Chair respectively of the IF and a fairly recent graduate becoming Chair of Convocation. These recently elected office-bearers of the IF and Convocation then presented themselves as new members of Council, in addition to two other union representatives and two student representatives. We saw and heard various expressions of doubt about the propriety and legitimacy of these new Council memberships, even to the extent of legal opinions being provided. When we asked one of the individuals concerned whether it was a coincidence that two union leaders were now occupying the two leadership positions of the IF they just shrugged, and said 'That's how people voted at the meeting'. Another interviewee told us that 'The IF has essentially always been an extension of NEHAWU'.

Yet another complicating factor was that the Audit and Risk Committee had earlier engaged an external forensic investigator to probe the allegations mentioned above regarding the Office Manager of the VC, and the forensic investigator provided their report to the ARC in November. We deal with

this matter at some length in Section 6.1. Suffice to say here that the investigator found no evidence that the VC and his Office Manager had ever set eyes on each other before they met for the first time in her job interview. Despite this finding, however, the ARC did not release the report (nor, apparently, made it known to Council that it had been delivered). At this time there was already dissatisfaction within Council that the ARC had commissioned such an investigation without, as it was alleged, proper consultation or sign-off from the Chair of Council. In fact, the Chair of the HR Committee of Council laid a formal charge in this regard against the Chair of the Audit and Risk Committee of Council. (Confusingly, these two individuals have the same last name, but we understand that they are not blood relations.)

By the end of 2018 there was great need for Council to meet, because various operational matters such as the budget and student accommodation required Council sign-off for the 2019 academic year. Also, Council needed to elect a new Chair. However, the scheduled Council meeting of 30 November was postponed to 7 December because there was no quorum, and the postponed meeting also failed to reach a quorum. Various allegations were put to us regarding who was during this time trying to prevent Council meetings, and why. Likewise, we heard two different versions of allegations about attempts at 'Council capture'. The next meeting of Council took place on 16 January 2019. Before coming to that meeting, however, we need to relate other developments during December and early January.

On 14 December 2018 the Vice-Chancellor sent the Chief Audit Executive (CAE, previously known as the Head of Internal Audit) a letter headed 'Notice of Intention to Suspend', saying that 'It has come to my attention that there are a number of allegations that you have committed serious acts of misconduct', and going on to say 'it is proposed that you are placed on suspension'. The CAE responded on 20 December with a 26-page letter ending with: 'I am therefore submitting that you cannot suspend me for allegations you are raising in your letter dated 14 December 2018'. In parallel, an undated letter went from the Chair of the ARC to the VC (apparently copied to Council, and received by the VC on 24 December), stating that 'The ARC held a special meeting on Tuesday 18 December 2018 in which the contents of your letter and your actions were discussed intensively', and 'The ARC requests you to immediately withdraw your letter and immediately reverse any action already taken in executing your decision'. The key reason given for this decision of the ARC is:

That the CAE is employed by Council and reports functionally to the ARC in order to ensure his independence from influence by management and accordingly the Vice-Chancellor (VC) has no authority over his appointment, performance assessment, suspension, disciplining and dismissal.'

The VC responded to the ARC Chair on 3 January 2019, saying that:

I ... wish to record that despite your view and that of the CAE, the CAE is accountable to me and I am within my rights to suspend and institute disciplinary action against him.

On the same day the VC also issued a letter of suspension to the CAE. The difference of opinion as to whether or not the VC has the authority to suspend the CAE is at the heart of the further unfolding of events.

The ARC Chair also wrote a letter to Council on 24 December, headed 'Serious governance issues arising since the start of the investigation of the employment and promotion of the manager in the VC's office'. It is essentially a complaint about 'interference' from Council members, this word being the subject heading of a large part of the letter. For example: 'The fact that a phone call and emails from the Chair of Council and the Chair of the HR Committee of Council are expressing prejudiced opinions on the legitimacy, merits and outcomes of the investigation ... points to a very serious breakdown in institutional governance.' And: 'There is a point where this has got to stop and ARC is allowed to carry out its mandated responsibilities without any undue hindrance.' We have seen a version of this letter where the opinion is expressed that 'The Chairman of council had a right to know about the investigation but not to approve or to interfere with it on behalf of one employee' – but the ARC Chair told us in interview that this particular sentence was expunged from the letter. It is not clear to us whether this letter was actually sent out to Council or not, but we found it an interesting indication of the ARC's view of its independence from Council, and of tensions within Council.

Because of the urgent need for Council approval of operational matters for the 2019 academic year, Council next met in an emergency meeting on 16 January 2019. This was a curious event. When the available Council members met, it was clear that once again, because of the 60:40 rule, there was no quorum. Members discussed the matter, and (we were informed) agreed that of those internal structures with 2 Council members present, one of them would leave the meeting, in order to lower the number of internal members and meet the quorum requirement. The meeting proceeded on that basis. Besides dealing with the operational issues, the meeting also proceeded to elect an Interim Chair of Council. There were two candidates, and it came down to a 50:50 split in votes. The Acting Registrar was then given a vote, which he exercised in favour of the previous Chair. We note that the Statute clearly says that the Registrar does not have a vote in Council.

The next significant development came shortly afterwards. On 20 January 2019 the ARC Chair wrote a letter to Council headed 'Suspension of the Chief Audit Executive by the Vice-Chancellor'. It begins by saying: 'On 24 December I copied the Council to a correspondence from the Audit and Risk Committee (ARC) directed to the Vice-Chancellor in response to his actions and stated intentions against the Chief Audit Executive (CAE)'. It then goes on to request that Council should 'urgently intervene' in this matter, through a number of actions.

The first of these proposed actions is that Council should review and overturn the decision of the VC to suspend the CAE, on the basis of a set of nine reasons given. (These reasons also appear in the submission NTEU made to us.) We quote the most relevant of these nine reasons, which are actually allegations against the VC:

- a) *'That the VC's actions are procedurally irregular as he has no authority to suspend and dismiss the CAE'*
- b) *'That ... the VC is a conflicted party in the two cases for which he is directing the CAE to give him information'*
- c) *'That the VC's actions are tantamount to granting himself unauthorised access to the whistle blower's identity'*

We discuss these allegations further in Section 6.3; for the moment we are just narrating the unfolding of events. Most of the other actions proposed in the ARC Chair's letter of 20 January amount to a strong view that Council should affirm the right of the ARC to deal with the performance management of the CAE, and that all employees and Council members should 'immediately refrain from interfering with the work of the ARC' – and therefore, by implication, with the investigation against the VC. The final proposed action is that Council should:

'Seriously consider whether the VC's actions and attitude towards the ARC and the Council do not constitute sufficient basis for his temporary removal from the workplace...'

This last recommendation was the main feature of the next and final phase of the internal conflict at UFH.

During March 2019 the Acting Registrar, following an enquiry from the DHET, provided an update on the situation at Fort Hare, indicating that the process of filling the remaining three vacant seats on Council was under way, that a process had been started to review the Statute, and that in the mean time the biggest operational problem for Council was the quorum challenge. And indeed the first ordinary Council meeting of the year, scheduled for 5 April, could not take place, because there was no quorum.

Matters now moved towards a climax. Paragraph 14(2) of the Statute stipulates that:

If, for any meeting, there is no quorum, the meeting is adjourned to a date not more than seven days later, at which the members present, constitute a quorum.

We believe that the time limit of seven days had been invoked before (as for example when the meeting of 30 November was postponed to 7 December), but it seems that the stipulation 'at which the members present constitute a quorum' now became central to what happened next. On 11 April, the Chair of Council wrote a letter to the Minister headed 'Inability of the UFH Council to achieve a quorum on April 5th 2019 and request for a Ministerial Directive if a quorate meeting cannot be constituted on April 12th 2019'. On the same day, the Registrar received 9 apologies from external members for the meeting that was supposed to happen on 12 April. The Registrar thereupon wrote to Council members to postpone the meeting once again. We were given to understand that this proposal was countered by the ARC Chair, on the basis of paragraph 14(2) of the Statute.

On 12 April, nine members of Council met. According to the signatures in the attendance register, they were:

- a) Two students, who signed the register as SRC members
- b) One Dean, who signed the register as an NTEU representative
- c) One NEHAWU representative
- d) The Chair of the IF, who signed the register as such (but who was also the Chairperson of the Alice branch of NEHAWU)
- e) The Deputy Chair of the IF, who signed the register as such (but who was also the Branch Secretary of NTEU)

- f) The Chair of Convocation
- g) The Chair of the Audit and Risk Committee of Council
- h) A new member, designated by the Buffalo City Municipality.

Neither the VC, nor the Acting Registrar (who is ex officio the Secretary to Council), nor the previous Chair of Council (elected 'Interim Chair' at the meeting of 16 January), nor the Chairs of any Council Committee other than the ARC, attended the meeting. According to the minutes the meeting then proceeded as follows.

First, an 'interim secretary for the meeting' was elected, namely the Deputy Chair of the IF. Following that, the meeting invoked paragraph 12(11) of the Statute, which says that if the Chair and Deputy Chair of Council are both absent at a meeting, 'the members who are present shall elect a chairperson from their own ranks for that specific meeting'. According to the minutes, 'the meeting unanimously nominated and appointed [the new Council member] to be the interim Chairperson to chair the meeting'. It was formally minuted that no members of the meeting declared a conflict of interest, and the meeting accordingly proceeded.

For present purposes the most important part of the minutes can be found in Section 6.2 of that document, which deals with the report of the ARC Chair, under a bullet headed 'The Irregular suspension of the CAE'. The meeting resolved that the VC's decision to suspend the CAE is set aside and that the 'Interim Chairperson' should write to the VC and the CAE to this effect. Most importantly, however, the meeting resolved that:

The desired outcome as tabled in the ARC letter addressed to the Council on the 20 January 2019 ... is approved by Council. To operationalise the resolution as per prayer 3(g) and 3(i) of the ARC letter, the interim Chairperson ... is empowered by the Council to dispense the necessary processes with the affected Council members in accordance with legal relevant prescripts including signing of any letters thereto.

What this somewhat opaque piece of minuting means is that 'prayer' 3(i) of the letter of 20 January from the ARC Chair to Council was the item that recommended that Council should 'seriously consider whether the VC's actions and attitude towards the ARC and the Council do not constitute sufficient basis for his temporary removal from the workplace'. In effect, therefore, although not explicitly minuted as such, the meeting had decided that the VC should be suspended.

We should mention that subsequent to the meeting a number of lawyers gave various conflicting opinions on the legality or otherwise of the meeting. It is not our purpose to adjudicate on this question, since in our view the question was superseded by the Ministerial decision to intervene and suspend Council.

We note also that paragraph 12(11) of the Statute allows a meeting to elect, if necessary, its own Chairperson *for that meeting*. We do not find any provision of such an election gaining any permanence subsequent to the meeting. None the less, such a presumption must have existed, because the 'Interim Chairperson of Council', now proceeded to act as though the title had substance outside of the meeting that conferred it. On a letterhead titled 'Office of the Interim Council Chairperson', they wrote two letters to the Vice-Chancellor on 18 April, one to say that his decision to suspend the CAE has been rescinded, and the other to give the VC notice of intention to place him on suspension. On the same day, the 'Interim Chairperson' also wrote to the Minister, on the

same letterhead, appraising her of 'the latest decisions of the University Ordinary Council that took place on the 12th April 2019'. As may be expected, these letters evoked a flurry of further correspondence. None the less, on 25 April the 'Interim Chairperson', again on letterhead, wrote a long letter addressed to 'The University of Fort Hare Community, Students, Staff, Alumni, Labour Unions and friends of the University of Fort Hare', headed 'A comprehensive update on behalf of the Council regarding matters of governance within the University of Fort Hare'. The next day the 'Interim Chairperson' wrote to the Dean who had attended the 'Council meeting' of 12 April, saying 'I now appoint you to be the Acting Vice-Chancellor until an Extra Ordinary Council engages on the matter further'. (The Dean followed up by writing 'I accept'.)

This is all rather remarkable, in various ways. For example, when we interviewed the 'Interim Chairperson' (elected at the meeting of 12 April) they informed us, in response to our questions, that they had had no previous experience of university governance or indeed higher education, and that they had had no contact with the University of Fort Hare or with any of the other Council members before attending their first Council meeting. The minutes of the meeting, however, as well as the various subsequent communications signed by the 'Interim Chairperson', display a considerable depth and breadth of knowledge regarding the affairs of the university. We infer that the 'Interim Chairperson', as a newcomer, very likely must have had some help or backup in dealing with these matters, but we were unable, despite questioning, to ascertain where this help came from. We note further that such help included creating a letterhead bearing the logo of the University of Fort Hare, and access to the means of sending out campus-wide communications.

The whole sorry saga finally came to an end when the Minister dissolved Council and appointed an Administrator on 26 April 2019.

4. Governance

The topic of governance is listed first amongst our specific terms of reference: we are specifically asked to provide a report on the state of the University's governance which has led the Minister to appoint an Administrator.

In Section 3 we have already given a narrative account of how governance at UFH weakened, became factionalised, and collapsed, particularly since mid-2018. In this Section we take a structural rather than a narrative approach to the topic of governance. Our own observations in this regard should be seen in the light of the Ernst & Young governance report.

For anybody interested in looking at the E&Y governance report, we should mention that it is unreadable in hard copy. Some of the text is in microscopic font size and faint print, and the visual problem is compounded by the liberal use of colour codings and colour overlays. Even in the electronic version, the report can only be read with patience, perseverance and an on-screen zoom facility. Other than that, it is quite good.

The E&Y analysis of governance is carried out in terms of a methodology based on five principles, namely: (1) strategic leadership, (2) governance of core functions, (3) governance of institutional resources, (4) institutional accountability, transparency and integrity, and (5) institutional structuring

and conduct of business. Each of these five principles are rated in terms of four indicators. The rating is done on a five-point scale, ranging from 'rudimentary' at the bottom, through 'developing', 'acceptable' and 'advanced', to 'leading practice' at the top. Whoever wrote the report thought it expedient to indicate these ratings in terms of colours, with the bottom rating in red and then a rising colour spectrum of orange, yellow and light green up to dark green for 'leading practice'. The entire E&Y report on governance can be summarised by saying that most of the indicators across all of the principles are coloured in red. There are a few orange indicators, and a sprinkling of yellow ones. There are no green indicators.

4.1 Council

Part of the narrative of Section 3 is the story of how, apart from internal divisions, Council was faced with practical problems of membership, attendance and reaching quorum, particularly so from mid-2018 onwards. We supplement that narrative here with some further examples and comments. To begin with, it is worth noting that in June 2016 the Minister of Higher Education and Training had already requested Council to submit (a) routine documentation, (b) proof of Council compliances, and (c) signed Council minutes.

Against that background, we consider the following examples of Council meetings.

- a) The first Council meeting attended by the current Vice-Chancellor was on 2 December 2016, by invitation, before he took up office. The meeting was inquorate. None the less, the meeting proceeded to confirm six sets of minutes of previous meetings of Council. Strangely, for the confirmation of one set of minutes (those of the meeting of 18 May 2016), the proposer was a Deputy Registrar.
- b) On 23 June 2017 Council met at the East London campus. According to the minutes, the Chairperson had once again 'made a few remarks on the quorum issues – in particular, non-compliance in terms of the Statute'. The Council mandated the Chairperson, Registrar and the Vice-Chancellor 'to look around for new members'. We infer that Council was already at that stage aware of looming issues of membership.
- c) At the Council meeting of 29 September 2017 the Chairperson proposed that for the 2018 academic year, 'the Registrar and the Vice-Chancellor should consider scheduling meetings of Council to be held over two days'. We believe that this was done in the spirit of trying to improve attendance.

Despite problems like this, the university's Annual Report for 2017 stated that:

Council exercised its delegated powers conscientiously and with success... ..and fulfilled its responsibilities with regard to governance.

As regards the subcommittees of Council, our impression is that these operated with varying degrees of efficiency and success. The Council subcommittees listed in the Statute are:

- a) Executive Committee
- b) Audit and Risk Committee
- c) Finance Committee
- d) Human Resources Committee

- e) ICT Governance Committee
- f) Language Committee
- g) Membership Committee
- h) Naming Committee
- i) Remuneration Committee
- j) Social and Ethics Committee

The Central Planning and Quality Assurance Committee, the Institutional Quality Assurance Committee and the Honorary Degrees Committee are joint committees of Council and Senate.

Some of the deficiencies of Council subcommittees identified in the E&Y governance report are:

- a) No Terms of Reference
- b) No evidence of written subscription to the Code of Conduct
- c) No evidence of annual, signed, declaration of interest forms
- d) Lack of supporting administrative functions
- e) No induction process
- f) Lack of training for Committee Section employees
- g) No proper record keeping systems.

Some of the committees experienced, like the mother body, problems associated with inquorate meetings. For example, the Executive Committee met four times in 2017: 10 March, 7 June, 3 July and 8 September. The Chair of Council was present only at the meeting of September 8, 2017. In her place, for the other meetings, the Deputy Chair of Council served as the Acting Chairperson. In the June meeting, only two external members attended the meeting. Similarly, in the four ICT Committee meetings of 2017 the internal members were consistently in the majority. The four meetings of the Finance Committee experienced similar challenges, and the pattern continued in 2018. The Remuneration Committee seems to consist of six internal members and one external member of Council (who chairs the Committee). This committee, according to the available minutes, met only once.

4.2 Senate

In any university, Senate is the governing body for academic matters. As far as we can judge Senate played no part in the fractiousness at UFH over the past few years, and the indications are that the academic business of Senate proceeded effectively, despite many distractions. In the E&Y governance report, Senate gets a better rating than most other sections scrutinised. None the less, Senate is not without issues, and some of these are raised in the Ralekhet-Gering Academic Review discussed in Section 2.1.

In addition, we venture a few comments from our own experience and within the context of our mandate to consider issues of governance and management.

- a) We found it surprisingly difficult to obtain Senate documents – even just Senate minutes. The archives of the Registrar's portfolio seem disturbingly chaotic.
- b) In the meeting we had with Senate, we posed our usual starting question of 'What went wrong at Fort Hare?' The most telling moment of the ensuing discussion came when a senior

professor said that the basic issue is one of ethics and morality. At that stage heads were nodding all around.

- c) It has been clear for some time that the composition and terms of reference of Senate subcommittees needed to be reviewed. There is no indication that such a process was initiated by the Registrar. It appears that it was the Interim DVC:AA who undertook this exercise with some earnestness.
- d) In our meeting with Senate, some members felt that a number of policies and procedures focusing on the academic area were outdated. Others felt that in some instances there was even a lack of crucial policies.
- e) We related in Section 2.3 our unease with the perverse incentives of the Research Management Policy. As the academic governance body of the university, good academic standards should be the first concern of Senate.
- f) We were told in interview that the Senate meetings which finalised the graduation lists tended (perhaps in the past) to be chaotic, with unreliable information and last-minute additions. Given our own experience with the difficulty of obtaining even basic information, this seems entirely plausible. If true, this particular unreliability would be of great concern.

4.3 Statutory Bodies

The Higher Education Act of 1997 provides for universities to establish a standing advisory structure which came to be known as the Institutional Forum. It was created as a mechanism to widen democracy of institutional governance. Its main areas of focus have to do with transformation, race and gender issues, mediation of conflict, dispute resolution procedures and the selection of candidates for senior positions.

Like at other institutions, the Institutional Forum at the University of Fort Hare draws its membership from a heterogeneous base of constituencies. Management, Council, Senate, organised labour and the SRC all have representation on the IF.

From the minutes of IF meetings it appears that over the two-year period preceding the appointment of the Administrator the IF played its role enthusiastically and advised the Council on a wide range of areas. However, particularly in the latter stages, there seemed to have been a feeling in the IF that the Council treated their work with disdain, so that the relationship between the IF, management and Council became fairly acrimonious. This coincided with a strong presence of union leadership on the IF. It is difficult to say what was cause and what was effect, but it is clear that the power-play which ensued had a negative impact on the work of the university.

It seems that there has been no provision for an induction process for members of the IF, nor is there standard provision for declarations of interest.

Our only interaction with Convocation was one meeting with the President of Convocation, a recent graduate who spoke warmly and eloquently of trying to be of service to the university in image-raising and fundraising, and sent us a draft of a Convocation Strategy. We have no reason to doubt the sincerity of these efforts. None the less we note that the Convocation President was one of the Council members present at the 'Council meeting' of 12 April 2019, which, ironically, resulted in the image-damaging result of an Administrator being appointed.

Finally, we have not had contact with the Alumni Association, but we were informed that a few Alumni Chapters have been established, notably in Gauteng and in Cape Town. We also note that, just before the Minister intervened, a number of eminent alumni published an op-ed article in the *Daily Maverick* of 24 April 2019 headed *Be part of the renewal of Fort Hare: A clarion call to students, staff and alumni*. It is strongly supportive of the Vice-Chancellor.

We are encouraged by the determination and courage of the current Vice-Chancellor, Professor Sakhela Buhlungu. He is committed to ensuring that the University of Fort Hare reclaims its place as the leading torch-bearer of the intellectual heritage and inherited values of the Eastern Cape. For that to succeed he and others at UFH must work tirelessly to root out corruption, self-serving behaviour and intellectual dishonesty.

In a world and a country where dishonesty, mediocrity and corruption are common, the Vice-Chancellor and others are fighting to make Fort Hare different. Above all, they must also enhance the academic integrity of the university. They need our support. We believe that the Vice-Chancellor offers the university moral and intellectual leadership that Fort Hare is in desperate need of if it is to survive.

5. Management

5.1 The Management Committee (ManCo)

As is common at many universities, there are two management committees at Fort Hare: the Executive Management Committee (ManCo) and the Extended Management Committee (EMT). ManCo is the smaller and more senior body, which we understand consists of the VC, two DVCs, the Registrar and the CFO. The EMT is a much larger body, which includes all of ManCo plus Deans and Directors.

We interviewed members of ManCo individually, and the EMT collectively. Our impression from the meeting with EMT is that the body did not quite know what its task was, nor did it seem to meet often.

As regards ManCo, it is clear from the narrative in Section 3 that part of the institutional difficulties before and after the current VC took office lay with the ManCo itself (see also Section 5.4). Within the space of a year, between late 2017 and late 2018, two DVCs and the Registrar had left, and were replaced with Acting DVCs and an Acting Registrar. This was seen by some ‘stakeholders’ – but not, apparently, by Council – as authoritarian action. Arguably, however, if the VC and Council are not satisfied with senior staff, then taking such steps is better than not taking them. Perhaps because of the fact that the majority of ManCo have been in an Acting capacity over the past year, we could get no clear picture of how this body functioned, nor of its effectiveness. The minutes of ManCo meetings since early 2017 do not give a satisfactory account.

In the E&Y governance report, all the indicators for ManCo are red. At the time of writing this report permanent appointments have been made to ManCo, so we may hope that the situation has now stabilized, and will improve.

5.2 Administration

The administration of a university is many-faceted, taking place both in a centralised manner and through academic administration of the faculties and departments. Different universities have different ways of making this work, but usually, and at Fort Hare, it is the Registrar who is responsible for all central administration of the academic enterprise.

There are two Deputy Registrars: one for Administration, and one for Governance and Legal Services. It is our impression that for some time Council business was mostly serviced by the Deputy Registrar for Governance and Legal Services, rather than by the Registrar himself. That is not satisfactory: being the ex officio secretary of Council is not a duty that the Registrar can delegate.

As regards administration, we formed some views from interviews, from documentation, from consulting an experienced former Registrar currently assisting the Administrator, and from our own experiences.

- a) Competency levels are sometimes low. For example, some of the minutes we have seen are not professionally produced. The Exams Office seems to be in a critical condition. (This would help explain the reportedly chaotic Senate meetings when graduation lists need to be finalised.)
- b) Some members of the administration are reportedly inefficient and unhelpful. The staff involved in student registrations, for example, were specifically mentioned in this regard.
- c) The processes of admission and registration in the multi-campus environment are said to be badly organised.
- d) Nobody seems to do information management. Record-keeping is haphazard. There is no central documentation system, so documents (policies, reports, minutes, academic records of students, etc) are kept on the computers of individual staff.
- e) There is no resolution tracking. Committee clerks only do minutes. That may help to explain why reports called for in Council or the IF often just never appear.
- f) The Registrar's office does not seem to have line of sight of NSFAS data.
- g) Administrative weaknesses are exacerbated by the multi-campus structure.

We quote from the E&Y governance report:

The Registrar's Office is responsible for driving the academic administrative cycles through effective and efficient policies, processes and SOP's. The academic administration function of the Registrar's Office is not being effectively fulfilled, as the necessary policies and supporting process documents do not exist. The cycles are purely people-driven at this stage.

Also:

The decentralisation of institutional and academic records, as well as the record management process is a significant risk to the institution. There are inadequate safeguarding measures in place, with limited storage space. Furthermore, the lack of automated processes creates the undesired risk of human error.

5.3 Finance

As outlined in Section 2.1, the university has been in financial dire straits for years. Moreover, as outlined in the E&Y finance report, it is still weak in terms of financial management. To recap:

- a) E&Y assessed finance at UFH on a five-point scale, and rated it as 'rudimentary', the lowest possible rating. 'Rudimentary' means 'significant deficiencies and breaks exist across all three value chain drivers' [People, processes and systems].
- b) Of the 12 sub-processes E&Y assessed, 10 were rated as rudimentary', and two at the second lowest level ('developing'). E&Y identified 10 critical control deficiencies, including 'inadequate budget, procurement and cash management practices'.
- c) 'The budget is currently set at a university level and not done per cost centre to drive accountability across various divisions. Thus accountability per cost centre is not possible'.

As shown by correspondence with the university, the financial weakness of UFH has been a concern of the DHET for some time. Accordingly, our terms of reference make this a matter of importance, requiring us to look into issues of financial management, policies and procedures, across the spectrum of activities of the university. To treat this matter with the seriousness it deserves, and to complement our own expertise, we engaged a financial expert, Mr Bulelani Mahlangu, to respond to particular issues. Mr Mahlangu's terms of reference, and his comprehensive financial report, can be found in Appendix F.

The current state of play is that the university has had a disclaimer audit opinion two years in a row. A disclaimer means that the auditors were not in a position to express an audit opinion on the financial position and performance of the university. The disclaimer reflects poorly on both governance and management, and confirms the findings of E&Y to the effect that there are significant gaps in the finance and supply chain management systems. It is evident that management and the ARC did not deal decisively with the 2017 audit findings.

None the less, there are some hopeful signs. The key question is whether the financial situation of the university is improving, and the answer is a cautious 'yes'. Specifically, from the Financial Expert's report (Section 3):

The surplus generated in 2017 and 2018 is a sign that some of the interventions e.g. instituting zero based budgeting (and not permit deficit budgets) and increase in NSFAS yearly funding have made significant contribution to the finances of the university. The cash injection of R300.6m from NSFAS in 2017 has gone a long way towards improving the short term liquidity of the university and the recovery of the bulk of the R80m is critical in order to significantly decrease the chance of having financial distress in the next twenty four months.

The determination of whether the university is a going concern depends on a number of factors, and critical factor being whether or not D HET would be willing to inject more cash into the university or allow it to divert grant money towards operations in the event of financial distress. We also note the willingness by a development funding institution (DFI) to lend an amount of R247m to the university as one sign of their confidence in the university's ability to continue functioning in the foreseeable future.

As is clear from this quote, NSFAS payments form a very important factor in the diagnosis of the university's financial health. Because NSFAS relates to students, the next question was whether it was the documented over-enrolment of students which gave rise to difficulties with NSFAS payments. The answer is that there are indeed difficulties with NSFAS payments, but there is no evidence that this is due to the over-enrolment issue.

Thirdly, there was a question whether and to what extent the fact that the university leases rather than owns much of its student accommodation has had an effect on its financial health. The answer is that it is difficult to answer this question because of the external auditors' disclaimer on student residence revenue.

5.4 HR

Our terms of reference require that we conduct an analysis of the circumstances and reasons for the significant number of staff suspensions, disciplinary cases and dismissals at the University since 2015.

To get a sense of the number of staff suspensions, disciplinary case and dismissals at the university, we sourced summary data going back to 2014, because that gives a roughly equal timeframe for a period before and after the current VC took office. The report we received, titled 'Employee Relations Report as at March 2019', gives the following summary over this period:

PROCEDURE	NUMBER	FINALISED	PENDING
Grievances	52	35	17
Disciplinary Cases	39	23	16
CCMA Cases	41	29	12
Total	132	87	45

The report also gives details of what the grievances were, or the alleged offences, or the issues before the CCMA. As regards the grievances, these seem to us largely the kind of matters that might be expected under this heading: grading of posts, contract renewals, permanency of appointment, salary adjustments, and so on. Most of the grievances emanated from the academic domain. We noted that out of the 52 grievances only 4 were categorised as 'victimisation'. (All of these were within the academic sphere, and 3 out of the 4 in one faculty.) Any grievance of 'victimisation' is of course regrettable, but 4 cases over 5 years in the entire university does not seem a high number.

The disciplinary cases feature the kind of charges which would warrant disciplinary steps if proven: fraud, sexual harassment (2 cases), gross misconduct, gross insubordination, abscondment (15 cases), and so on. By far the greatest number of the disciplinary cases emanated from the non-academic domain. Of the finalised CCMA cases, a number were withdrawn, a number were settled (some of these 'due to HR Admin error'), and of the cases ruled on by the CCMA the number of rulings in favour of the employee(s) were roughly equal to the number of rulings in favour of the university.

The question of whether these cases, in total across the university, form 'a significant number', cannot be answered without doing some benchmarking against other universities, which we have not done. However, it is possible that the reference to a 'significant number' of such cases refer in the first instance to the more visible cases of senior staff members. We therefore looked into such cases on an individual rather than a numerical basis.

As regards cases of what might be called in summary 'unusual departures' of senior staff from the university, we are indebted to the immediate past Vice-Chancellor for explaining to us a number of disciplinary and/or CCMA cases during his own tenure. Namely:

- a) A Director of Properties and Services, who left after a settlement agreement.
- b) A DVC:IS, who left after a settlement agreement.
- c) An Executive Director of HR (the circumstances of whose unusual departure were not clear in interview).
- d) A Registrar who was found guilty of misconduct and received a final written warning.
- e) Another (earlier) Registrar who accepted employment elsewhere before a disciplinary hearing was concluded.
- f) A CFO who resigned before facing disciplinary charges.
- g) A Head of Internal Audit who faced charges but resigned.
- h) An Admissions Manager who was dismissed.

These cases may be compared with similar cases during the tenure of the current Vice-Chancellor.

- a) A DVC:IS who resigned, apparently citing difficulties in working with the VC.
- b) A DVC:AA whose term expired and was not renewed.
- c) An HR Director who resigned during a disciplinary process against them.
- d) A Dean of Students who resigned after being advised that disciplinary charges would be brought against them.
- e) A Registrar whose term of office was due to expire within 6 months accepted a settlement agreement (we note that this was the same Registrar who had already received a final written warning under the previous VC).
- f) A Contracts Manager who resigned while charges were being prepared against them.
- g) A Director of Community Engagement, whose contract was not renewed.
- h) A Director of Properties and Services who resigned during the course of disciplinary proceedings.
- i) A Residences Manager who retired early after a disciplinary case was brought against them.
- j) The CAE, whose case before the CCMA was still pending at the time of writing this report.
- k) Three mid-level staff who resigned during ongoing investigations regarding alleged kickbacks from service providers.

We conclude that a significant number of 'unusual departures' of senior staff had already happened during the tenure of the previous VC, but that the number and pace of such departures had gone up since the current VC took up office. We also note that one of the previous 'unusual departures' was a Head of Internal Audit – apparently this was handled without it becoming a major issue, unlike the more recent case of the CAE.

As regards the reasons for the phenomenon of a significant number of 'unusual departures' over time amongst senior staff, we would point in the first instance to the general malaise at the university

as outlined in Section 2. Against that background, it becomes (ironically) somewhat reassuring that action could be taken, and was taken, against senior staff at least as much as against junior staff.

In the case of the current VC, we would also point to two contributory factors. The first was his brief from the Chair of Council to address the weaknesses and malpractices already evident during the tenure of his predecessor. The second contributory factor worth noting is the VC's somewhat forceful leadership style in dealing with the issues at senior management level. The task of addressing management failures was undeniably important, but there were other important tasks as well which did not seem to receive the same level or manner of attention. We have already mentioned lack of maintenance, for example, and the poor student facilities, and we have pointed out that not all of these issues were a matter of money or resources. In the absence of equally forceful interventions in other domains, then, it was always likely that the VC would be accused of focussing overmuch on certain individuals, and such allegations duly materialised. We return to these matters in Section 6.4.

We were also asked to consider the HR policies and practices of the university. In this regard we refer again to the four reports mentioned in Section 2.1, in particular the Ernst & Young governance report. Amongst the 10 themes of critical governance deficiencies listed by E&Y, a number are HR-related:

- a) No organogram structure in place to provide a hierarchical view; no clear reporting lines and alignment to the business needs of the institution.
- b) Staff culture being resistant to change – new organisational culture is needed.
- c) Performance management process is inadequate and does not drive accountability and promote exceptional employee performance.
- d) Critical vacancies not being filled – these exist across the institution, impacting core and support functions. No talent management, including succession planning.

As regards the evaluation of their principles of governance, in the case of HR the E&Y report regards four principles and nine indicators as applicable (page 62); these are all coloured red, meaning 'rudimentary'. For example: 'There are no strategic documents compiled by the HR Department, such as: Human Resources Strategic Plan, Human Resources Plan, Organogram, Operational Plan, Certain human resources policies (e.g. sexual harassment policy, talent management policy and acting allowance policy)'. In Appendix L to the E&Y report there are 24 pages of HR findings and recommendations (pages 210-233).

Finally, we mention as an encouraging sign of moving in the right direction that the university has adopted a consequence management policy. The document we were given might not be the final version, since it has some editing infelicities, but the content seems basically sound, as is the intention of holding all employees of the university accountable.

6. Allegations against the Vice-Chancellor

A number of allegations have been made against the Vice-Chancellor, both before and after our appointment as Independent Assessors. As far as we could ascertain, all the allegations arose from the following sources:

- a) Two anonymous whistleblowing reports, dated respectively 27 March 2018 and 13 March 2019
- b) The Progressive Youth Alliance (PYA), which consists of the ANC Youth League (ANCYL), the Young Communist League (YCL), and SASCO
- c) The two organised labour unions on campus, NEHAWU and NTEU
- d) A report by the Audit and Risk Committee.

There is considerable overlap between the whistleblowing reports, the allegations by the PYA and the allegations by the two unions. Broadly speaking, these allegations can be divided into two categories: general and specific. The general allegations refer to the management style of the Vice-Chancellor and the increasing dysfunctionality of Council. The specific allegations refer to the Vice-Chancellor in person, and various actions of his.

To some extent (but not altogether) the specific allegations feed into the general allegations. We therefore deal with the specific allegations first.

6.1 Alleged irregularities relating to the appointment and remuneration of the Manager in the Vice-Chancellor's Office

On 27 March 2018 a Confidential Report was sent by Reg Horne, the Managing Director of Whistle Blowers (Pty) Ltd, www.whistleblowing.co.za, to the Head of Internal Audit (later the CAE) at UFH. The report stated that an SMS was received by the company, following which they contacted the whistleblower to gather more information. We quote from Mr Horne's report:

- a) 'The whistleblower reported the Vice-Chancellor, Prof Sakhela Buhlungu, for irregularities pertaining to his failure to disclose his romantic relationship with his Office Manager.'
- b) 'According to the whistleblower all the recruitment procedures had been followed and there had been no irregularities with regard to the Office Manager's employment. The caller however mentioned that the Vice-Chancellor failed to adhere to the said policy [stipulating that employees were meant to disclose any relationship which could result in a conflict of interest] because he had not informed the Human Resource Department of their relationship, prior to her recruitment.'
- c) 'The whistleblower added that the VC and the Office Manager had a child together. The caller however was unable to elaborate on the said allegations.'
- d) 'The whistleblower further reported Professor the VC for his suspected influence in the Office Manager's irregular salary scale increase.'

In essence, then, the Vice-Chancellor stands accused of conflict of interest, on the basis of an alleged 'romantic relationship' with his Office Manager. From this single allegation flowed an entire sequence of events, with far-reaching consequences for the university.

It is worth saying at the outset that a professional forensic investigator was engaged by the University to investigate the allegations. The forensic investigator, Adv Dion Hucker, concluded after a thorough investigation that there is no evidence that the Vice-Chancellor and his Office Manager had ever met before they saw each other for the first time in her job interview. Nor was any such evidence submitted to us, despite our open invitation for submissions.

We further state that even though the name of the Office Manager concerned was widely bandied about, we do not intend to add to the distress caused to this person by mentioning her name in this report as well.

It is very instructive to follow the unfolding of events.

- a) The whistleblower allegations soon became common knowledge on campus. We understand that it featured on social media, and on placards during the strike period in the middle of 2018.
- b) On 20 June 2018 the Branch Secretary General of the NTEU, who was also a member of Council, wrote to the Registrar on NTEU letterhead to submit supplementary agenda items for the Council meeting of 22 June. One of these agenda items was to ask that Council should 'thoroughly investigate' the re-grading of the position of Office Manager in the VC's office.
- c) On 6 August 2018, the Chief Audit Executive wrote to Adv Dion Hucker of Forensic and Compliance Consulting Services a 'Letter of Appointment to conduct an investigation', accepting his quotation to deliver 'the above-mentioned project' for a fee of R180,450.00. There does not seem to have been a written set of terms of reference accompanying this letter. Instead, the letter advises Adv Hucker to consult with the Chief Audit Executive 'to discuss the details of the project and a way forward'.
- d) However, Adv Hucker did detail his understanding of what needed to be investigated in his quote for undertaking the investigation, and also in his eventual report. Namely:

A complaint was received *via* the University of Fort Hare's ("*UFH*" or "*the University*") anonymous whistleblowing system on 27 March 2018, relating to allegations of irregularities surrounding an alleged personal relationship between the UFH's Vice-Chancellor ("*VC*") and the Manager in his office, who was appointed following a recruitment process, which started in 2017. The alleged irregularities can be summarised as follows:

- (i) The whistle-blower alleged that the V-C did not disclose a conflict of interest based on his alleged personal relationship with the relevant Manager at the time of, or during, her appointment process.
- (ii) The whistle-blower further alleged that the conflict of interest of the V-C was due to the V-C and the relevant Manager having a child together.
- (iii) The whistle-blower also alleged that whilst the relevant Manager was still on probation, the V-C influenced the Acting Director of the UFH's Human Resources ("*HR*") component, Ms Rakate, to award a salary increase (from salary grade 8 to 6) to the Manager in his office. This was allegedly irregular.

- e) The investigation was undertaken on behalf of the Audit and Risk Committee (ARC) of Council, and the eventual letter dated 19 November 2018 from Adv Hucker delivering his report was addressed to the Chairperson of the ARC. Whether or not Council itself, and in particular the Chair of Council, ever approved such an investigation is a disputed point (see below).
- f) The 64-page report produced by Adv Hucker (which we will refer to as the Hucker Report) was never published. Our understanding is that the 'owner' of such a report under normal circumstances would be Council. In the absence of Council, the 'owner' is therefore the Administrator. The Administrator did in fact request the report from Adv Hucker, who referred the Administrator to the Chair of the ARC. The Administrator then requested the report from the ARC Chair, who refused to release it to him, saying that he would only release it to the Independent Assessors. We then requested the report, and after some correspondence obtained it from both Adv Hucker and the ARC Chair. We subsequently interviewed both Adv Hucker and the ARC Chair on the report, as well as the handling of the report. We have handed over the Hucker report to the Administrator, and agreed with him that we may quote from it at will.
- g) The Hucker report is in our view a professional piece of work, reporting on an investigation conducted with the methods employed by professional forensic investigators. These methods include, for example, forensic imaging (by the Principal Forensic Analyst of another company, DFIRLABS (Pty) Ltd) of the laptops and cell phones of the VC and the Office Manager.
- h) As regards the allegation of a 'romantic relationship', the relevant conclusions may be extracted from the Hucker Report as follows:

4.33 The analysis of the data [from laptops and cell phones] shows the existence of nothing but a professional relationship between the two parties

4.37 Based on the processes performed to investigate the alleged "romantic relationship" and the existence of a child from the said relationship, there has been no evidence found to corroborate or support the relevant allegations.

4.124 The whistleblower and others seeking to discredit the V-C and [the Office Manager] during industrial action, or on social media, appear to have filled in the gaps or their lack of knowledge of the facts, with their own perceptions

5.00 No evidence could be found of an alleged "romantic relationship" between the V-C and [the Office Manager], nor of the existence of any child born from this relationship, based on the processes and procedures performed during the investigation. These findings are supported by, inter alia, comprehensive analysis of electronic data obtained from both parties' official devices; analysis of telephonic account information; comparative analyses of documentation; and questions posed and answered during interviews conducted.

5.01 In the absence of proof of any personal relationship between the V-C and [the Office Manager] there would have been no duty to disclose any relationship by the V-C. The allegations of the V-C not declaring or disclosing a conflict of interest could not be supported or corroborated by the evidence provided or obtained. No evidence was found of telephonic or email communications from the V-C to [the Office Manager] prior to her appointment, based on the analysis of data obtained from the relevant forensic imaging process.

- i) As long as the allegation of a ‘romantic relationship’, and thereby the charge of conflict of interest, remained unrefuted, a great deal of attention was paid to the various salary raises of the Office Manager. The facts of the matter seem to be as follows:
- (i) We have seen the documentation regarding the appointment, and we are satisfied that it was professionally done. The Office Manager was duly appointed by a committee on which ‘stakeholders’ were adequately represented. There is one small anomaly: her name only comes to the fore in committee papers after the post had been re-advertised, even though (as she mentioned to us) she had already applied during the first round. This may be nothing more than another case of administrative weakness. At any rate, it does not materially affect the rest of the story.
 - (ii) The Office Manager noted during interview that the job on offer was lower than what she had done before, and the VC made a handwritten note to this effect in his interview notes. The Office Manager also raised the issue of salary from the outset when the job was offered to her.
 - (iii) When she took up office on 6 November the Office Manager’s salary was R606,000 p.a., which did not satisfy her. She took up the matter with the VC, who referred her to HR. [See Hucker report item 4.99]
 - (iv) The Interim Head of HR tried to deal with the matter by using a provision in the Peromnes Grading system to increase the Office Manager’s salary to R640,000.00 p.a. and sent her a revised appointment letter [Hucker report items 4.100-101]]
 - (v) After that the VC took up the matter personally, and asked why the Office Manager’s salary was so much lower than that of her predecessor, who was paid R901,017.00 p.a. [Hucker report items 4.104-105]
 - (vi) The Office Manager was then requested to draft a revised job description, which she did. Justification of the revisions was provided to Adv Hucker. [Hucker report items 4.107-109]
 - (vii) The revised job description was forwarded to Deloitte for grading on the Peromnes system, and the outcome was tabled at a ManCo meeting on 28 February, resulting in a re-grading from Peromnes Grade 8 to Grade 6. [Hucker report items 4.110-113] [Assessors’ Note: The VC pointed out to us in interview that this particular job regrading was not a stand-alone event, but part of a batch of three job regradings done by Deloitte at that time.]
 - (viii) The Interim Head of HR informs the VC that the new salary for the Office Manager will be R664,424 p.a., which is the lowest notch of Grade 6. The VC responds on 12 March 2018 that ‘this does not make sense’, and authorises a salary at the middle of the range, i.e. R827,335.00 p.a. This was done. [Hucker report items 4.117-119]

- (ix) The matter resurfaces on 18 June 2018, when the VC writes to the Interim Head of HR that ‘When I approved the adjustment of her salary in March to R827,335.00, I was under the impression that this was the notch where [her predecessor] was. You will recall that I had asked that she be placed on the same level as [her predecessor]... I have just become aware that [her predecessor] was sitting in a higher salary notch. Could you please address as soon as possible.’
- j) On the basis of this outline of events it is clear that the VC took an active interest in the salary of his Office Manager, and decided that she should be paid at least as much as her predecessor. Since there is no evidence of him having a conflict of interest in this matter, the remaining question is whether he was operating outside his powers in doing so. In this regard, the relevant conclusions from the Hucker report are as follows:

5.03 Notwithstanding the apparent technical non-compliance with the Performance Management and Recruitment Policies referred to in paragraphs 4.91 and 5.02 of this report above, there is still no objective proof of undue influence by the V-C in the recruitment or appointment process to favour [the Office Manager], or to provide her with an unfair advantage. The interview panel’s scores reflect that she was the best of the three (3) shortlisted interviewees and this was confirmed by, inter alia, [the Interim Head of HR and a panel member].

5.06 There are no prescripts or policies, which have been provided or made available during this investigation, prohibiting or limiting the V-C from authorising and approving the adjustment of [the Office Manager’s] remuneration

According to the Hucker report, therefore, in actively intervening in the remuneration of his Office Manager the VC had not broken any rules. That does not mean it was wisely done. It is worth noting that the Chair of Council informed us in interview that she had advised the VC early on to build capacity in his office. Still, in exercising this intervention the VC seemed not to have taken into account the kind of impression it would create should his intervention become public – as it was almost bound to do, given all the eyes upon him.

- k) The ARC discussed the Hucker report at a meeting of 23 November 2018. The report was presented by the Chief Audit Executive, not by Adv Hucker himself. From this point onwards opinions diverge and matters become contested.
- (i) From the minutes it appears that there was some difference of opinion between members. ‘Some audit committee members could not find conflict of interest’, but others ‘were not willing to submit a questionable report to council’.
- (ii) It appears from the minutes that the ARC identified two matters which they regarded as unresolved. The first was that the VC had not signed off on his interview with Adv Hucker, and indeed, after initial cooperation, had become increasingly insistent on the point that he had not yet been presented with the terms of reference of the investigation. The second issue was ‘questionable internal processes followed in salary adjustment of the office manager’ – which presumably means that some ARC members did not accept Adv Hucker’s conclusions regarding this matter. No reasons are given in the minutes.

- (iii) The minutes also show that dissensions regarding the investigation had emerged within Council. For example, the minutes state that: 'some employees are being defended by some members of the council and this could be found in some instances as interfering with the Investigation'.
 - (iv) After discussion, 'the resolution was that the report needs to be restructured'. [Assessors' note: During interview we asked the ARC Chair what kind of restructuring the ARC had in mind. His response was that 'that was a loose use of words – the report was incomplete'.]
 - (v) Presumably there was some feedback from the ARC to Adv Hucker, because we have seen an email from him to the Chief Audit Executive dated 11 December 2018 saying 'I still haven't found anything to really affect or alter my original findings'.
- l) In our view, the Hucker report provided the ARC in November 2018 with an unambiguous and authoritative response to all aspects of the original whistleblower allegations. Clearly, if there was no 'romantic relationship', then the foundation of any charge of conflict of interest falls away, and any further charge of 'influencing' salary adjustments becomes a (much less explosive) matter of policy and procedure. Therefore, given the rising tensions within the university at the time, it is our view that the ARC could have done much to ease those tensions by releasing the main findings of the report to Council, and possibly through Council also to the campus community. At the very least, the original allegation of a 'romantic relationship' could have been refuted, possibly through an interim report, even if the ARC wished for further investigations to be done on the matter of salary raises. Doing so would also have shown natural justice to two colleagues who had been publicly maligned. However, the ARC chose not to release the report, nor any summary or interim report – not even to the rest of Council. We note, however, that Adv Hucker was eventually paid for his services, which would normally be taken as acceptance of his report.
- m) The main point of dissension within Council regarding the ARC investigation seems to have been whether or not Council, and in particular the Chair of Council, had ever approved such an investigation. We can only report that we received conflicting responses on this question from the Chair of Council and the Chair of the ARC. According to the minutes of the ARC meeting of 23 November 'The Chairperson of ARC communicated with the Chairperson of Council to inform her about the case against the VC ... The communication with the Chairperson of Council was also to seek approval from her as section 7.1.3 of Whistleblower policy requires'. Against that, the Chair of Council informed us in interview that she had not authorised the investigation, nor had Council discussed it in any of its meetings, nor had she ever received the Hucker report. We also note that the Chair of the HR Committee of Council wrote to the Chair of Council on 5 November 2018 to lodge a formal complaint against the Chair of the ARC for having instigated an investigation against the VC without formal approval of Council. We quote: 'In one of his emails he stated that he did what he did with the full knowledge of the Chairman of Council. However, with due respect, conducting an illegal investigation with the full knowledge of the Chairman of Council and conducting an investigation with the written approval of Council signed by the Chairman of Council are two different things. Whether the Chairman of Council was made aware of the investigation or not is irrelevant.'

- n) There is further disagreement as to the question of who actually authorised the payment for Adv Hucker. The CFO processed the payment, but was careful to annotate the relevant document, i.a. with the statement that 'The Chair of the Audit Committee has confirmed verbally and per the attached email [19 January 2019] that the document is in order'. However, the ARC chair and the Chair of Council flatly contradict each other on the question of whether the Chair of Council had authorised the payment.
- o) The matters above do not exhaust allegations regarding the employment of the Office Manager, which seems to have become a kind of focal point for NTEU allegations against the VC. In addition to the points above there are also allegations of preferential treatment regarding her accommodation and benefits such as car hire. We have not been able to pursue these matters, for lack of time and capacity. We note further that subsequent to the Hucker investigation the Office Manager applied for, and was appointed to, another and more senior position in the university. The NTEU also makes certain allegations in this regard, the essence of which seems to be the following:

Following the completion of the interview process, [the Office Manager] was ranked 4th by the panel based on the average scores of the panellists, however she was by some miracle pushed to be the only qualifying candidate. The report of the psychometric test was never presented to the panel, except a summary generated by the HR Director who is seen as a henchman of the VC. Some candidates, though scoring higher scores than [the Office Manager] were disqualified based on a manipulated psychometric test.

We obtained the documentation relating to this appointment; these documents give us no reason to think that the appointment process was anything other than professionally conducted. The post was advertised, 39 people applied, selection criteria were clearly outlined, and 5 people were shortlisted and invited to interview. The interview panel of 9 people included the Vice-Chancellor, two Deans, the Director of the Library, the HR Director, the Finance Director, the 'Co-Director' of Advancement (an academic), and one representative each from NEHAWU and NTEU. The panel found three applicants out of the five interviewees to be appointable, and these three people then underwent psychometric assessment. We have seen all three the full psychometric assessments, and in our view they are similar to such assessments we have seen elsewhere. The psychometric assessment led to only one applicant being recommended for appointment, namely the Office Manager of the VC.

6.2 Various other specific allegations against the Vice-Chancellor

For purposes of conciseness, we group together here a number of disparate allegations.

- a) Allegations regarding the use of a recruitment company called Landelahni (now apparently N2Growth). These allegations are actually more against the Chair of Council than against the Vice-Chancellor himself. The charge is that 'At the insistence of the Vice-Chancellor, the University is doing business with Landelahni ... to recruit all executive management members

(Registrar and both DVCs). Amongst the directors of Landelahni is Adv Orleyn [Chair of Council] and member of Council, Ms T Mgoduso. Records of Council will show that there is no declaration that was done in a Council meeting when the appointment of the said company was discussed.' [NTEU letter to the Minister dated 27 April 2019, item 5.] Having made enquiries on our behalf with the company and CIPS, our financial expert Mr Mahlangu reports that Adv Orleyn was a non-executive director of Landelahni between 2004 and 2008, when she resigned, and that Ms Mgoduso has not had any connection with Landelahni. The Vice-Chancellor informed us that he first encountered Landelahni during his own appointment process. The Landelahni matter is dealt with further in Appendix F.

- b) Dissatisfaction regarding an article in the *Sunday Times* on 1 April 2018. The allegation is that the article 'quoted the VC sentiments portraying our University as a disorderly, lawless, corrupt and incompetent institution that is selling academic certificate'. [PYA letter to Council, undated, but presumably around mid-October 2018.] We have read the article, which seems to have arisen from the fact that a 24-hour security team had been assigned to the VC. The VC is forthright in his views, and quite open in responding to questions from the reporter, but he does not lead with his own views and any reference to 'degrees for sale' seems to be the words of the reporter, not the VC. We note that the secretary of the SRC is quoted as saying 'there was good and bad in the SRC's relationship with Buhlungu. There are things he has done well, and one of them is cleaning up the university. But he is not treating the SRC as people who are supposed to co-govern'. We note further that the Chair of Council, in a letter to the Minister on 18 October, says that 'The matter of the *Sunday Times* article is the domain of Council and has been addressed at that level.' All in all, we find this particular piece of journalism not unusual for Sunday newspapers, and we believe it does not do the university discredit to the extent that the matter needs further attention.
- c) Allegation that security guards and equipment were sourced for the VC without a proper Supply Chain Management process. [PYA letter to Council, mid-October 2018, cited immediately above.] The fact that the usual SCM process was not followed does not seem to be in dispute, so the question must be about the reasons for this deviation. We were told in interviews (not by the VC) that there were two reasons: first, that the matter was urgent, and second, at least one Council member advised against using the SCM department on the grounds that some of the most virulent opposition against the VC arose from that quarter. We note further that the Chair of Council wrote to the Minister on 18 October that: 'The in-principle appointment of security staff for the Vice-Chancellor was approved by the UFH Council, based on an assessment of the UFH context. Because of the sensitive nature of the appointment, it was not done through the UFH security division. A deviation was signed by the Chair of Council and subsequently ratified by Council.' Also: 'The security equipment for the Executive Suite at Alice was purchased through the UFH ICT division.' The matter is dealt with further in Appendix F.
- d) Allegations regarding the Hunterstoun development project. This matter could be a case study of good intentions gone awry. Hunterstoun is a property partly donated to the university from the estate of the late Monica Wilson. It is located a few kilometres out of Hogsback, has a wonderful location and a beautiful old stone house, and could be ideal for an academic retreat. However, it needs upgrading, to provide suitable facilities for meetings of a reasonable number

of people. The allegation is that the VC improperly engaged a firm of architects to work on this project. In the PYA letter to Council of mid-October 2018 the allegation reads as follows: 'Lastly, the outcry of a R1,3 million tender irregularly awarded to a certain company which has proximity to the Vice-Chancellor for mysterious reasons. ... In a waiver document created by the office of the DVC of which that was on its own an irregularity has been disapproved by the director of properties and services, SCM and the office of the Chief Financial Officer speaks volumes of the flaws of the process.' This is somewhat opaque, but we understand it to refer to the Hunterstoun project, as per the Chair of Council's response to the PYA allegations in her letter to the Minister of 18 October 2018. The matter was also brought to our attention in a submission by the former Director of Properties and Services. In addition, we received a file full of documents from the Director of the Hunterstoun facility. We understand the facts of the matter to be as follows:

- (i) Funding was obtained for an initial upgrade of the Hunterstoun house (renovations of the main house, toilets and kitchen facilities), in part from the National Institute for Humanities and Social Sciences, and this funding needed to be spent within a certain time period.
- (ii) One set of architects (Activate) had been working for some time on the overall Hunterstoun project, which is much more ambitious than just an upgrade of the house.
- (iii) It was decided that for the smaller project it would be good to engage a local firm, Nkonyama Okpanum and Associates, in a joint venture with Activate.
- (iv) The Director of the Hunterstoun Centre therefore requested a waiver of the normal SCM process, dated 28 March 2018. This request went to the VC with a Memo dated 17 April 2018 from the Interim DVC Institutional Support, saying i.a. 'The sought revised appointment is for a joint venture between the above-mentioned two firms given that Activate is based in Johannesburg and NOA local. The scale of work to be done in the current arrangements is too minimal to engage Activate's services while it makes business sense to utilise locally based NOA services in order to ensure maximum efficiency.'
- (v) The VC wrote 'Approved' on both the Hunterstoun Director's submission and the DVC:IS memo, signed and dated it (24 March 2018).
- (vi) At this stage someone must have realised that proper process for a waiver had not been followed, and that a waiver document needs a number of signatures before going to the VC for signature.
- (vii) The Hunterstoun Director then wrote another memo, dated 6 June 2018, to those managers who should have signed in the first instance. This memo states that: 'The approval of the original motivation was signed by the VC (24/4/2018). However, an administrative error occurred and as a result, the VC signed before the DVC IS, SCM and the CFO had considered and supported the proposal.' The addressees were then asked to sign a waiver document, which would 'regularise the authorisation of the approval in terms of the approved SCM process'.
- (viii) The Director of Properties and Services wrote on that document 'Not supported', and signed it. This seems to be the origin of the allegation of improper engagement of architects.

Evidently, the matter was badly handled up to that point. However, some internal self-correcting mechanism seems to have kicked in, because the Chair of Council, in her letter to the Minister wrote: 'The architects have not been appointed. The matter has been referred back to the Hunterstoun Centre Board. Based on their recommendation, the process will start afresh.' We briefly visited the Huntersoun property, and no work has yet been done. It seems that, in the end, the rush to get a waiver approved was self-defeating. The matter is dealt with further in Appedix F,

- e) Allegation regarding abuse of the university credit card by the Vice-Chancellor. [NTEU submission] The allegation is that the Vice-Chancellor has used his university credit card in buying items 'that are not authorised'. We asked for the VC's credit card statements, obtained them, and could not see any irregularities. The matter is dealt with further in Appendix F.
- f) Allegation of illegal donations, from a whistleblower's report of 13 March 2019. The allegation is that the VC donated some cows to the Chief Tyhali and Mngqesha Royal house 'without following SCM process'. We felt duty-bound to question the VC about this allegation, and found his response very educational. He explained that the donation of cows between communities is an accepted cultural practice, called *nqoma*, that it is of a reciprocal nature, and that he did not see this particular donation (of a bull, a cow and a calf) as anything other than building community relations. Being out of our depth in this regard, we were not inclined to pursue the matter any further.

6.3 Allegations emanating from the Audit and Risk Committee of Council

In Section 3 we narrated the sequence of events that led up to the 'Council meeting' of 12 April 2019. As explained, the subsequent action by the 'Interim Chair of Council' to 'suspend' the VC was based on the report of the ARC Chair at that meeting, and in particular 'the desired outcome as tabled in the ARC letter addressed to Council on the 20 January 2019'.

It may be helpful at this point to recall some of the sequence of events. By late November the ARC had received the Hucker report, but not released it (nor apparently informed the rest of Council that it had been received). By mid-December the VC had issued the CAE with a notice of intention to suspend him. The ARC Chair wrote to the VC before Christmas requesting him to withdraw this notice, on the following grounds:

That the CAE is employed by Council and reports functionally to the ARC in order to ensure his independence from influence by management and accordingly the Vice-Chancellor (VC) has no authority over his appointment, performance assessment, suspension, disciplining and dismissal.'

The VC responded to the ARC Chair on 3 January 2019, saying that:

I ... wish to record that despite your view and that of the CAE, the CAE is accountable to me and I am within my rights to suspend and institute disciplinary action against him.

On the same day the VC also issued a letter of suspension to the CAE. On 20 January 2019, the ARC Chair then wrote to all members of Council informing them of the VC's response of 3 January, and requesting Council 'to urgently intervene' through a number of actions. The first of these proposed actions is that Council should review and overturn the decision of the VC to suspend the CAE, on the basis of a set of nine reasons given. (These same reasons also appear in the submission NTEU made to us.) We quote the most relevant of these nine reasons, which are actually allegations against the VC:

- g) *'That the VC's actions are procedurally irregular as he has no authority to suspend and dismiss the CAE'*
- h) *'That ... the VC is a conflicted party in the two cases for which he is directing the CAE to give him information'*
- i) *'That the VC's actions are tantamount to granting himself unauthorised access to the whistle blower's identity'*

Most of the other proposed actions amount to a strong view that Council should affirm the right of the ARC to deal with the performance management of the CAE, and that all employees and Council members should 'immediately refrain from interfering with the work of the ARC' – and therefore, by implication, with the investigation against the VC. The final proposed action is that Council should:

'Seriously consider whether the VC's actions and attitude towards the ARC and the Council do not constitute sufficient basis for his temporary removal from the workplace...'

As explained in Section 3, it was this last recommendation that featured so significantly in the 'Council meeting' of 12 April.

With this background, we comment on the main allegations levelled against the VC by the ARC Chair as follows, in reverse order.

The allegation that the VC's actions are 'tantamount to granting himself unauthorised access to the whistle blower's identity' seems to depend on which whistle-blower is being referred to. One would assume, given the context of the letter, that the reference is to the original whistle-blower allegations of March 2018 regarding the Office Manager of the VC. Those allegations, however, originated with a mere SMS and arrived at the university via an independent third party, Whistle Blowers (Pty) Ltd, www.whistleblowing.co.za. We have not seen any reference to the identity of the whistleblower in any of the documentation before us, including the Hucker Report. We do not see how the VC, by suspending the CAE, could possibly have gained access to the identity of this whistleblower.

Secondly, there is the allegation that the VC 'is a conflicted party in the two cases for which he is directing the CAE to give him information'. In order to consider this allegation we need to go back to the VC's 'Notice of Intention to Suspend' to the CAE dated 14 December 2018. Two reasons are given for the intention to suspend:

- 1.1 *You were involved in concealing and/or refusing to disclose an investigation report in relation to my office in order for its contents to be amended.*

1.2 You failed and refused to report to me as the Vice-Chancellor, your superior, on the status of the current ongoing investigations in relation to the cleaning contract and cars purchased university staff in order for me to report to Council and the Department of Higher Education and Training. The progress and outcomes of these investigations impact directly on the University's administration and precautionary measures therefore have to be put in place to limit the University's risk. The investigations have been ongoing for months and cannot continue to be delayed whilst possible implicated officials proceed to work within the University as they could jeopardise the investigation against them.

We have seen no evidence that the VC is a conflicted party in the second (1.2) of these two cases. In interview the VC had put forward strong views and expressed much frustration on the difficulties of investigating a case regarding cleaning contracts, which he believed had defrauded the University of millions of Rand over a period of years. If the VC had reason to believe that the CAE was not sufficiently diligent in pursuing, or was withholding information in regard to, a case of possible fraud, he might well have considered such reasons as grounds for suspension.

As regards the reason numbered 1.1, presumably the 'report in relation to my office' is the Hucker Report, and the CAE is charged with concealing and/or refusing to disclose that report in order for its contents to be amended. Now we are getting into deep waters. As noted above, the Hucker report had indeed been delivered to the CAE and the ARC Chair, and the ARC had indeed resolved not to release the report, because it needed to be 'restructured' (or, as the ARC Chair later told us in interview, 'it was incomplete'). It is also clear that Adv Hucker had had some feedback in this regard, given his comment to the CAE of 11 December that 'I still haven't found anything to really affect or alter my original findings'. The VC may therefore well have had grounds for believing that the CAE was complicit in 'concealing' the Hucker report 'in order for its contents to be amended'. However, making this particular suspicion the first of his reasons for suspending the CAE would naturally open the VC up to a charge of conflict of interest, as then inevitably happened.

From a governance point of view the most fundamental (and the most interesting) of the charges made by the ARC Chair against the VC is the first one: that the VC does not actually have the authority to suspend the CAE. The VC's response was exactly the opposite: that the CAE falls under his jurisdiction since the VC is the ultimate accountable officer of the University. Much could be written about this difference of opinion, both in general as a matter of principle and in particular as regards the case before us. It is a well-established principle that the Internal Audit function of the university must be independent, and must be overseen by the Audit and Risk Committee of Council. It is also, however, a well-established principle that Council appoints the Vice-Chancellor not only as the chief academic officer of the University, but also as the chief executive officer of the University. Council delegates all management functions to the Vice-Chancellor, which means that the Vice-Chancellor is the ultimate line manager of all employees of the University, including the CAE.

Most universities under most circumstances manage to avoid open conflict between these two principles, and they manage to do so because there is sufficient trust and collegiality between the major role-players to iron out any differences of opinion. Clearly, in the present case the ARC Chair and the VC took diametrically opposing views on who could take a decision to suspend the CAE, and in the absence of trust and collegiality the matter descended into power play. Our view is that both parties could have, and should have, tried to avoid open conflict in the interest of the greater good of the university. The VC could, for example, have considered dropping the first of the two

reasons for suspending the CAE. The ARC Chair also had options for avoiding conflict. They could, for example, have considered releasing the Hucker Report, or an interim version of it, so as to get that particular matter out of the way. Neither party, however, seemed to have considered the possibility of engagement or compromise. A sensible next step would have been to take the matter to the Chair of Council and/or the Chair of the HR Committee of Council, but in this case the relationship between the ARC Chair and both the Chair of Council and the Chair of the HR Committee was already adversarial. It is always easy to be wise after the event, and clearly the febrile atmosphere at the time would have made sober and considered decision-making very difficult. None the less, separately or jointly, the conflicted parties could have sought outside advice or mediation, whether through some professional body or through the DHET. Instead, the conflict worsened.

6.4 General allegations regarding the management style and actions of the Vice-Chancellor

The PYA has been vocal in articulating general complaints about the Vice-Chancellor, including mismanagement, maladministration, corruption and discrediting of the institution. Where these generalisations have been accompanied by specifics, we have tried above to deal with the specific allegations. We have no record of the SRC making any such allegations, but in interactions with SRC members we heard a view that the VC is generally not approachable, and that in particular he is not willing to address student mass meetings in times of trouble. NEHAWU, in their submission to us, speaks of 'lack of communication, consultation with stakeholders – autocratic behaviour leading to unilateral decisions by MANCO'. [NEHAWU submission, pages not numbered.]

Complainants also charge that Council, and in particular the Chair of Council, have been aiding and abetting the VC in his various supposed transgressions. The PYA state that 'As primary stakeholders, we are of the view that the council itself is the serious threat to the wellbeing of the university as it is in cohort [sic] with the dubious Vice-Chancellor operations'. [PYA letter to the Minister, 2018/10/23] The whistle-blower report of 13 March 2019 claims 'People know that Thandi Orleyn with her cabal is the one who brought Buhlungu at Fort Hare to push her agenda'. The NTEU submission speaks of a 'deliberate and orchestrated attempt to collapse the UFH Council as long as the prospect of Ms Thandi Orleyn are not certain for her to be appointed as Chairperson of Council.'

It must be said that the VC also has supporters and even admirers within the university, although these voices are much more muted. In personal interviews, on condition of anonymity, we heard views expressed that the VC has been principled and courageous, and even that 'The new VC is the best thing that could have happened to this university'. When we met with Senate we heard no complaint about the VC. Likewise, when we met with the SRC, the main topic of conversation was not the VC or management, but the poor state of the university generally and student facilities in particular.

As regards the interaction between the VC and the Chair of Council, it is clear that the Chair of Council supported the VC throughout. As she wrote to the Minister on 5 December 2018:

Since the VC assumed office on 1 February 2017, he with the support of Council has been systematically dealing with management failures, lack of accountability and corruption. There

now appears to be a concerted action of backlash against the VC and certain members of Council which is designed to get rid of them.

We do not find anything wrong with a VC being appointed with a mandate to improve the university. Nor do we find anything wrong with the Chair of Council giving the VC strong support.

Having made our way through masses of documentation, and on the basis of our three interviews with the VC, we would say, however, that he does indeed have a decisive and perhaps somewhat abrupt style of management and leadership. That is not a crime, but it carries its own risks, and in deploying such a leadership style it would be good to weigh up the risks and possible consequences before going into action. One of the risks, which we believe materialised in the present case, is to be perceived as focusing on individuals rather than fighting against wrongs. It might be argued that desperate times demand desperate measures, and that decisive leadership was exactly what was needed at Fort Hare. We accept that there is truth to such an argument. On the other hand, experienced leaders know that sometimes it is for the best in the long term to adjust your style according to the circumstances, even if that might appear as a defeat in the short term. In our view, however, the VC's strengths lie more on the side of determination and single-mindedness than on the side of flexibility and adaptability.

As for approachability, the VC confirmed to us that he would not go to a student mass meeting when there is unrest, since in his view student leaders would only use the occasion to try and humiliate him. He would therefore send somebody else in his stead. The difficulty with this approach, we think, is that it amounts to asking one of your staff to take your place in whatever humiliation might be meted out.

Finally, we should state for the record that we gave the VC a summary of the various allegations against him, and invited him to respond in writing, but he declined the opportunity.

7. Findings

**“The truth is never only on one side.”
Former Chair of Council, in interview.**

In conducting our independent assessment of the University of Fort Hare, we started most interviews with a simple question: ‘In your opinion, what went wrong at the university?’ A few interviewees, and a few submissions, concentrated on assigning blame immediately and primarily to the Vice-Chancellor: that he has been disruptive, and has pursued some kind of nefarious agenda under the mantle of being a corruption buster. On this version of events, Council was either too weak to constrain the VC, or was actively complicit in his activities. At the other end of the spectrum, a few interviewees and submissions identified nothing but a union-led conspiracy, determined to capture Council in order to protect their own interests and further their own agenda, including getting rid of the Vice-Chancellor.

Most interviewees, however, took a more thoughtful line. As may be expected, everybody has their own perspective, but generally there was an acknowledgement of a number of different factors which reinforced each other, to the point where breakdown was reached. That is also our view. There is no doubt that the unions and the student political organisations were the most active and outspoken opponents of the Vice-Chancellor, and that they left no stone unturned, and no reputation unsullied, in their efforts to discredit and unseat him. It is also clear that the two unions were the main participants in the breakdown event, the so-called ‘Council meeting’ of 12 April, which led the Minister to dissolve Council. However, this event could not have happened without systemic weakness and the active participation of other role-players, each with their own set of dissatisfactions.

Our starting question of what went wrong at Fort Hare is a simple formulation of the first part of our top-line terms of reference, namely to advise the Minister on ‘the source and nature of the problems facing the institution’. Our findings are as follows.

- a) **First**, the problems at Fort Hare are systemic, and they go back a long way. Our report as Independent Assessors is the 5th major report on the University of Fort Hare within 10 years. Each report arose from a particular brief, but they all convey the same message: the University of Fort Hare suffers from deep-rooted administrative and financial weaknesses. It is clear to us that *Fort Hare must learn to do the basics better*. The primary difficulty is not, in our view, lack of staff or resources (although there are exceptions), but lack of a culture of responsibility and accountability.
- b) **Second**, there are disturbing signs of a widespread belief that the university is a kind of cash cow which everyone is entitled to milk for personal benefit. The problem is not only that this may happen outside of rules and policies. The problem is also that some of the rules and policies are quite generous in distributing university largesse.
- c) **Third**, the students have legitimate cause for grievance. We have spoken out in the body of this report regarding the deplorable condition of some of the accommodation, teaching venues and laboratories. It is no wonder that students – particularly student political organisations – might jump on any anti-management bandwagon. Clearly, maintenance of

the physical infrastructure has been entirely inadequate, to the point where even basic human dignity has been compromised. However, there is also a more deep-seated problem than just maintenance. It appears that, for years, Fort Hare has over-enrolled students – partly, it must be said, due to pressure from students themselves. It was put to us that Fort Hare sees itself as ‘a university of access’. This is a noble cause, but in danger of becoming self-defeating. Over-enrolment may increase access, but it risks decreasing success, because the university simply cannot cope with the numbers.

- d) **Fourth**, Council became weak when it should have been strong. As a new broom, the Vice-Chancellor was expected to sweep clean, and he set about this task with energy and determination. It should have come as no surprise that this led to internal conflict. A strong Council would at this stage have been able to give the VC support, whilst at the same time exercising a moderating influence on his leadership style. Instead, the legitimacy of Council was weakened by problems of membership and quorums, and in that state of weakness it became factionalised. In particular, the Audit and Risk Committee of Council, determined to uphold a strong view of its independence, veered towards autonomy, and in effect became a parallel body to Council rather than part of it.
- e) **Fifth**, there is a non-negligible level of belief that the university should be run, not by management, but by a commonality of ‘stakeholders’. This belief goes beyond the principle of cooperative governance, towards a desire for co-governance, and in some cases even further, towards an insistence on co-management. Our view is that it is the task of management to run the university, and it is the task of Council to ensure that the university is run properly. ‘Stakeholders’ take part in governance in order to exercise checks and balances through that medium, not in order for themselves to govern or manage the university.
- f) **Sixth**, and in our view most importantly, the main source of the problems facing the University of Fort Hare was the general disregard of a fundamental principle of governance. We refer to the principle, namely, that the role of a governor is to act at all times in the best interest of the institution as a whole, not to act as a ‘representative’ for any particular constituency or group. In particular, at a university, the role of a Council member, whether internal or external, is to contribute to collective decision-making for the benefit of the entire University, not to seek any advantage, nor try to exercise any supposed autonomy, for any ‘stakeholder group’ or substructure of the University.

These are our general findings. More specific findings are distributed amongst the recommendations below, as well as in Appendices E and F.

Our general findings are essentially a diagnosis of what went wrong. In so far as we have a prognosis for the future, we would say that there are some encouraging signs of recovery. The Administrator has overseen the formulation of a turnaround plan for the university. The Statute is being amended. The cash flow situation has improved. Management seems to be moving beyond the phase where most senior managers were in an acting capacity. Support entities like Fort Hare Solutions and the

Fort Hare Foundation are in a better position than at the time of previous reports. It will, however, take time and careful nurturing for these green shoots of improvement to grow and mature.

We hope that our recommendations below will make a substantial contribution to further recovery, so that the University of Fort Hare can claim the place in higher education that its history has marked out for it.

8. Recommendations

The second part of our top-line terms of reference is to advise the Minister on ‘measures required to restore good governance and management at the University of Fort Hare’.

To fulfil this mandate we should state at the outset our belief that there might be little point to any recommendations we make if UFH were simply left to its own devices after a period of administration lasting only one year. There is a non-negligible risk that in a post-administration phase the university could revert to another crisis situation, even with a new Statute and a new Council in place. The risk of reversion arises because of the entrenched culture of the institution, the current weaknesses of governance, management and administration, the loss of trust and collegiality, and the fact that any incoming Council will be new on the job. All of these factors require time to remedy, and a year will very likely not be enough. We therefore structure our findings and recommendation from the top down, beginning with recommendations for DHET, and of these the first is that the university requires a period of increased post-administration oversight from the Department.

In the process of doing our independent assessment, we found it useful to look at various reports of other independent assessors at other universities. From what we have seen, we believe there is at least one common problem across universities which have been placed under administration. It is the problem identified in our final finding above: disregard for the fundamental principle of governance that the interests of the institution take precedence over the interests of any ‘stakeholder’ group. It appears all too common that Council members regard themselves as representing a particular constituency, rather than the university as a whole.

Without wishing to stray beyond our terms of reference, we therefore believe it relevant to observe that DHET may find it effective in the long run to adopt a risk-based approach to its oversight of the higher education sector. On a risk-based approach, more effort and attention would be paid, not only retrospectively, but rather prospectively, to institutions considered to be at higher risk of instability. Essentially, a risk-based approach operates on the principle that prevention is better than cure.

8.1 Recommendations regarding DHET actions

8.1.1. We recommend that after the one-year term of office of the Administrator has ended, UFH should be subject to increased and regular scrutiny by DHET for a further period of, say, three years. For convenience we refer to this as a period of special measures. If necessary, the required measures could be introduced through a Ministerial Directive. This will give a new

Council time to accustom itself to its duties, it will allow time for the restoration of trust and collegiality, and it will give management sufficient time to implement (and be held to account for) the various other recommendations in this report.

- 8.1.2.** We recommend that the DHET should constitute a dedicated UFH Oversight Team, responsible for the increased and regular scrutiny of UFH during the period of special measures. The UFH Oversight Team should report through the Deputy Director-General and the Director-General of DHET to the Minister.
- 8.1.3.** We note and support the task of the Administrator to furnish UFH with a new Statute, and to constitute a new Council. We also note and support the action of the Administrator to request management to come forward with an institutional turnaround plan for UFH. The essential purpose of a 3-year period of special measures would be for DHET to satisfy itself, through its UFH Oversight Team, that management and council are actively implementing such a plan.
- 8.1.4.** We therefore recommend that the Administrator's practice of submitting quarterly reports to the Minister be continued by the incoming Council during the entire period of special measures. We also recommend that the UFH Oversight Team should visit UFH at least annually during this period to satisfy itself that progress is being made on clearly-defined KPIs within specified timeframes.
- 8.1.5.** We recommend that the new Statute should not allow any Council meeting to proceed without meeting a specified quorum.
- 8.1.6.** We recommend that the Minister should give consideration to a new Chair of Council being recruited and appointed through DHET, rather than elected by the new Council members from amongst themselves.
- 8.1.7.** We further recommend that the new Council should not take up office until every member, both internal and external, has been through a thorough induction process regarding university governance, including on principles of governance. Such an induction process should be mandatory, not optional, and should be overseen by DHET, not left to Council itself to arrange. In particular, the induction should emphasize the fundamental principle that it is not the task of a Council member to act as a representative of any constituency or 'stakeholder' body. If necessary, the term of the Administrator should be extended until such time as the new Council has been inducted and is ready to take up office.
- 8.1.8.** We note the point (made by NEHAWU) that since Council was not properly constituted for a number of meetings, all decisions taken at those meetings might be invalid. As we understand it, NEHAWU is in effect arguing that if the 'Council meeting' of 12 April 2019 was invalid, and should be set aside, then so too should various earlier Council meetings such as the meeting of January 2019 be set aside, and thereby all decisions taken at these earlier meetings. We cannot judge the legal correctness of this view, but we would note that most decisions taken at these earlier meetings (and even at the meeting of 12 April) dealt with giving the necessary Council sanction to management decisions regarding vital operational issues at the university. It would not, in our view, serve the interests of the university to pursue the path of

a blanket recall of decisions taken at these various ill-constituted meetings of Council. We recommend that the Administrator, in lieu of Council, could retrospectively legitimise such decisions. If necessary the Minister could issue a Directive in this regard.

- 8.1.9.** To address and assuage concerns about the academic environment at UFH, we recommend that DHET liaise with the CHE to arrange for an institutional quality assurance audit to be carried out at UFH during the period of special measures. Putting UFH first in line for such an audit would fit with the idea of risk-based oversight of the higher education sector.
- 8.1.10.** We recommend that DHET should clarify the status of co-opted members of Council. During our investigations we never quite got a clear answer to the question of whether the Chair of ARC was a member of Council or not. The Chair of Council informed us that she ‘treated him as such’. The Acting Registrar once sought legal opinion, and came back with the response that the ARC Chair was not a ‘regular’ member but an ‘ex officio’ member. These words, however, bring no clarity. The question is whether a co-opted member, the ARC Chair in this case, has voting rights on Council or not. According to the former Statute of Council, Section 9(1)(d) the answer is no, but it is not clear whether this was adhered to. (Note: we referred the particular question of Council membership of the ARC Chair to DHET, and the answer came back that, under the circumstances, the ARC Chair was actually not a member of Council. This means that at the ‘Council meeting’ of 12 April 2019 there were actually only 8 Council members present.)

Finally, without being so bold as to make it a recommendation, we state our view that at some stage DHET will need to consider the overall situation of tertiary education provision in East London. The current situation is that three universities operate in East London (UFH, Walter Sisulu and UNISA), but none of them are actually headquartered there. It seems curious that there is a single fully-fledged regional university in smaller places like Makhanda and Mbombela, but not one in East London.

8.2 Recommendations regarding governance

We have already made a number of recommendations for DHET actions regarding a new UFH Council in Section 8.1 above. We also make a number of specific recommendations regarding the composition and functioning of Council and the Committees of Council in Appendix E. Further recommendations are as follows:

- 8.2.1** To provide a further safeguard to staff and students against what they might perceive as abuses of power, we recommend that Council should create an Ombud post, and appoint a person into this role. (We prefer the term ‘Ombud’ to ‘Ombudsman’.) The creation of such a post has been discussed at UFH before (see for example the Council Minutes R/26/017 for the meeting of 23 June 2017). The Ombud should be independent of Management, not a member of Council, and during the period of special measures should have a direct reporting line to the DHET. Benchmarking should be done on how to structure this post and how to support the Ombud. To avoid the Ombud being swamped with complaints large and small, there should be a rule that the Ombud will have discretion on which cases to take up, and

that normally all internal processes of the University should have been exhausted before the Ombud comes into play.

- 8.2.2** We recommend that the incoming Council, together with Management, should work the findings of the Ernst & Young Governance Report into the institutional turnaround plan. The UFH Oversight Team should monitor the implementation of these findings.
- 8.2.3** As regards academic governance, we recommend that Senate and Management should implement the recommendations of the Review of the Academic Enterprise by Prof M Ralekhetho and Dr M Gering, and report to Council and the UFH Oversight Team on the implementation of these steps.
- 8.2.4** We specifically recommend that an academic review should be carried out of PhD programmes across the university, with particular reference to quality of supervision and external examination, as well as completion times.

8.3 Recommendations regarding management

- 8.3.1** We do not recommend any disciplinary action against the Vice-Chancellor.
- 8.3.2** We do, however, recommend that some appropriate support structures should be put in place for the VC, to give those who are aggrieved with him some reassurance that the 'dictatorship' of which he has been accused could not become a reality. Specifically, we recommend:
- 8.3.2.1 That the Ombud should not report to the VC. During the envisaged period of special measures the Ombud should report on a regular basis to the UFH Oversight Team, and afterwards to Council.
- 8.3.2.2 That, as expected of other staff members and as stated in his letter of appointment, the VC should enter into an Individual Performance Agreement (IPA) with the Chair of Council, and that progress on the institutional turnaround plan should be part of this agreement.
- 8.3.2.3 That as part of the VC's IPA the Chair of Council should conduct an annual performance appraisal of the VC through a 360-degree evaluation, including input from the Ombud, and should report to the UFH Oversight Team on such appraisals as part of the regular reporting envisaged during the period of special measures.
- 8.3.3** We recommend that the Management Committee (ManCo) should meet regularly, and often: we recommend meeting weekly.
- 8.3.4** We recommend that a report on ManCo business should be delivered by the VC at every Council meeting.
- 8.3.5** To help rebuild morale and cohesion, we recommend that management should immediately embark on a campus-clean up programme, which could be started and concluded within the space of a few months. Pick up all the litter. Supply rubbish bins, and make sure they are cleaned regularly. Get rid of all the old broken furniture cluttering up the place. Unblock and bring back into operation all blocked washbasins and toilets. Make a plan to clear out the dead birds from the Nursing Sciences Building. Get rid of the broken-down vehicles in the

Transport Section. [Note: None of this requires a lot of money or resource, nor even for an outside company to be contracted.]

- 8.3.6** In particular, we recommend that management should pay immediate attention to all ablution facilities in student residences. Without waiting for new residences to be finished, or embarking on a major contractual obligation, the university should be able to put its own cleaning and maintenance staff to work to clean out, repair, paint and tile all toilets, showers and baths to bring it to a condition of adequacy where, at the very least, the university need not be ashamed of it.
- 8.3.7** We recommend that an immediate health and safety check should be conducted of all buildings and facilities. The necessary repairs and refurbishments should be effected within one year, and reported through Council to the UFH Oversight Team.
- 8.3.8** We recommend that, as one of its first tasks, the incoming Council should formulate a policy regarding the perks of office of members of the Extended Management Team, including in particular the provision of fully-maintained and fuelled vehicles. The policy should be benchmarked against best practice nationally, should take into account the realities of UFH's financial position, should include the compulsory reporting of such perks in the university's annual report, and should be finalised and implemented in consultation with the UFH Oversight Team.
- 8.3.9** We further recommend that, once a policy has been approved regarding the perks of office of members of the EMT, a further policy should be formulated and implemented regarding Staff Benefits generally, across the university.

8.4 Recommendations regarding finance

A number of detailed and specific recommendations regarding financial management and supply chain management appear in Appendix F. These should be regarded as part of our overall recommendations. In addition, we recommend as follows.

- 8.4.1** We recommend that a forensic investigation be done of the workings of the Supply Chain Management Office over the past three years. The report of this investigation should be submitted to Council and the UFH Oversight Team. To keep such an investigation manageable we recommend that it should in the first instance consider issues arising from the Report of the Financial Expert (Appendix F), such as:
- 8.4.1.1 The finding that three of the fifteen tenders processed during 2018 and 2019 were cancelled. The issue is whether the tenders were cancelled for valid reasons.
- 8.4.1.2 The fact that the university was allocated a further R52m by the DHET to complete the Early Childhood Development Project – the issue being what the process was followed to appoint the service providers and to evaluate the reasons for the shortfall.

- 8.4.1.3 Property Developers are paid through a company called MBB Consulting Engineers – the issue is what process was followed to appoint them.
 - 8.4.1.4 Student Centre Shop Retailers – the issue being what was the process followed to appoint them.
 - 8.4.1.5 Security costs related to the VC – the main issue being whether there is genuine reasons for twenty two months having passed since the company was engaged.
 - 8.4.1.6 An investigation of possible conflicts of interest, by cross-checking the ID numbers of EMT members plus Supply Chain and Finance Unit staff against the CIPC information of the service providers – the issue being that there does not seem to be a formal declaration of interest process.
 - 8.4.1.7 The process of approving student residence service providers, with a focus on contracts awarded in 2018.
- 8.4.2** We recommend that Management should implement the recommendations of the E&Y Finance Report. A set of actions and KPIs should be drawn up, which, with the approval of Council, should become part of the turnaround plan.
- 8.4.3** We recommend that Management should draw up, Council should approve, and the UFH Oversight Team should monitor, a financial sustainability plan, as part of the overall institutional turnaround plan.
- 8.4.4** We recommend that more capacity and capability be built into or sourced for the Finance Unit.
- 8.4.5** Expenditure: We recommend that before any further new capital works are approved, UFH should first embark on a thorough programme of upgrading and maintenance of its physical infrastructure. In particular, the upgrading and maintenance of student accommodation, teaching facilities and laboratories must have first call on the capital expenditure budget until such time as the physical infrastructure is in acceptable shape.
- 8.4.6** We recommend that, as part of the institutional turnaround plan, management should for the longer term formulate and implement a Physical Infrastructure Maintenance Policy.
- 8.4.7** We recommend that the Equicent matter should be addressed and finalised as part of the turnaround plan. This is a matter for both UFH and DHET, perhaps through a joint task-and-finish team, under the special measures provision. This would follow up on the various communications from DHET to UFH regarding the Equicent matter.
- 8.4.8** We recommend that the Research Incentive Policy should be revised, and that the practice of paying research incentive money directly into the personal bank account of academics should be stopped. Our view is that research incentive money, if paid at all, should be paid into research accounts, and only be expended for research purposes. In addition, any research incentive policy which adopts monetary payments as an incentive should be counterbalanced by strong academic quality control measures.
- 8.4.9** We recommend that, as part of the turnaround plan, Management should make an assessment of the overheads in time and money of the multi-campus model, and embark on a program of introducing efficiencies and minimising duplications, including in the academic

sphere. Reports on progress should be submitted through Council to the UFH Oversight Team.

Appendices

Appendix A: Acronyms

AA	Academic Affairs
AGSA	Auditor General of South Africa
ANCYL	African National Congress Youth League
ARC	Audit and Risk Committee of Council
BAC	Bid Adjudication Committee
BEC	Bid Evaluation Committee
CA	Chartered Accountant
CAE	Chief Audit Executive
CCMA	Commission for Conciliation, Mediation Arbitration
CFO	Chief Finance Officer
CIO	Chief Information Officer
CIPC	Companies and Intellectual Property Commissions
DG	Director-General
DHET	Department of Higher Education and Training
DVC	Deputy Vice-Chancellor
EMT	Extended Management Team
E&Y	Ernst & Young
FinCo	Finance Committee
HR	Human Resources
IA	Independent Assessor
ICT	Information, Communication and Technology
IF	Institutional Forum
IPA	Individual Performance Agreement
IS	Institutional Support
KPIs	Key Performance Indicators
ManCo	Management Committee
Minister	Minister of Higher Education, Science and Technology
MOU	Memorandum of Understanding
NEHAWU	National Education, Health and Allied Workers' Union
NOA	Ngonyama Okpanum and Associates
NSFAS	National Student Financial Aid Scheme
NTEU	National Tertiary Education Union
PFMA	Public Finance Management Act
PhD	Doctor of Philosophy
PWC	Price Waterhouse Coopers
PYA	Progressive Youth Alliance
SAICA	South African Institute of Chartered Accountants
SARS	South African Revenue Service

SASCO	South African Students Congress
SCM	Supply Chain Management
SMEs	Small and Medium-sized Enterprises
SRC	Student Representative Council
ToR	Terms of Reference
TVET	Technical and Vocational Education and Training
UFH	University of Fort Hare
Unisa	University of South Africa
VC	Vice-Chancellor
WSU	Walter Sisulu University
YCL	Young Communist League

Appendix B: Terms of Reference of the Independent Assessor

The terms of reference of the Independent Assessor for UFH were published in the Government Gazette No. 42567, Notice No. 649 on 05 July 2019

TERMS OF REFERENCE OF THE INDEPENDENT ASSESSOR TO CONDUCT AN INVESTIGATION INTO THE AFFAIRS OF THE UNIVERSITY OF FORT HARE

INTRODUCTION

In terms of Section 44 and 45(a) of the Higher Education Act, I, Dr BE Nzimande, Minister of Higher Education, Science and Technology, hereby appoint an Independent Assessor to conduct an investigation into the affairs of the University of Fort Hare. The overall purpose of the investigation is to advise the Minister on the source and nature of problems facing the institution and the measures required to restore good governance and management at University of Fort Hare.

TERMS OF REFERENCE

1. Conduct a detailed analysis of, and provide a report on the state of the University's governance which has led to the Minister to appoint an Administrator and the current state of management including policies and procedures pertaining to financial management, supply chain management, human resources, and information technology.
2. Conduct an investigation of the financial policies and procedures of the University and its business entities, with a specific focus on internal audit processes, procurement and tender procedures, and any specific allegations of financial irregularity that may be brought to the attention of the Independent Assessor.
3. Conduct a detailed analysis and report on the human resource policies and practices of the University, particularly in relation to enhancing organisational efficiency and employment relations at the University.
4. Conduct a detailed analysis and report on the circumstances and reasons for the significant number of staff suspensions, disciplinary cases, and dismissals at the University since 2015.
5. Conduct an investigation on the allegations of misconduct and mismanagement against the Vice-Chancellor.
6. Investigate the operations of the Office of the Registrar in relation to the management of academic affairs, registration and certification matters and any other matters that the Independent Assessor believes warrant investigation.
7. Identify any regulation, policy or practice that must be reviewed or created to improve employment relations within the University.
8. Conduct a detailed analysis of and provide a report on the functioning and efficacy of the statutory structures, namely the Institutional Forum, Convocation and the Alumni Association.

9. Investigate and report on any matters that, in the opinion of the Assessor, may impact on the effective functioning of the University from the analysis of problems relating to governance and management.

TO MAKE RECOMMENDATIONS ON

10. The restoration of good governance and management, specifically in relation to the Executive Management and the Council.
11. Any other areas of action required to ensure the effective functioning of the University.
12. Any other recommendation that requires the attention of the Minister and the Department.
13. What actions, if any, ought to be taken.

COMPLETION AND REPORT

14. The Independent Assessor must complete his/ her work and submit a written report to the Minister within 90 days from the date of publication of this notice. In terms of Section 47(1), the report must contain findings of the investigation together with the reasons upon which the findings are based and recommendations of appropriate measures and reasons why such measures are needed.

Dr BE Nzimande, MP
Minister of Higher Education, Science and Technology
Date:

Appendix C: The Assessors

Professor Chris Brink served as Vice-Chancellor of Newcastle University in the UK from 2007 till 2016. He was a Board member of the Russell Group, as well as the N8, the partnership of eight research-intensive universities in the North of England, which he also chaired. He has served as a Board member of Universities UK (where he chaired the Student Policy Network), the national Equality Challenge Unit (also as Co-Chair), the national Quality Assurance Agency, the national digital services provider JISC, the Advisory Committee on Leadership, Governance and Management of HEFCE, the North East Local Enterprise Partnership, and various regional Boards.

Before taking up his position at Newcastle, Professor Brink was Vice-Chancellor of Stellenbosch University in South Africa. Earlier, he had served as Pro-Vice-Chancellor (Research) at the University of Wollongong in Australia. Before that he was Head of the Department of Mathematics and Applied Mathematics at the University of Cape Town, and served as the University's Coordinator of Strategic Planning. Other earlier positions include a Senior Research Fellowship at the Australian National University in the 1980s and a brief spell in industry in the USA.

Professor Brink is a logician with a Cambridge PhD, an interdisciplinary Dphil, Master's degrees in philosophy and mathematics, and a Bachelor's degree in computer science. His research areas include mathematics, logic, philosophy and computer science, and he has published in all these fields. Before moving into management he held the prestigious "A"-rating of the National Research Foundation. Currently he serves on the University Grants Committee in Hong Kong, where he chairs the implementation of the sector-wide 2020 Research Assessment Exercise.

Professor Louis Molamu is an alumnus of the University of Fort Hare. He completed the Bachelor of Arts (Sociology and English) degree and the University Education Diploma in the early 1970s. He also obtained the M.Sc. (Industrial Sociology) at the University of Bradford in the United Kingdom.

He started his academic career in the Department of Sociology at the University of Botswana and Swaziland at the beginning of the 1980-1981 academic years. Prior to his return to South Africa in 1996, Molamu had served as the Head of the Department of Sociology. Molamu joined the Department of Sociology at the University of South Africa (Unisa), where he later served as the Head of Department. In 2000 he was appointed to the position of Deputy Dean in the Faculty of Arts. In 2001 he was appointed as the University Registrar, a position in which he served until his retirement at the end of 2012. As part of his responsibilities as the Registrar, Molamu served as secretary to the Executive Management, Senate, Council and Convocation.

Professor Molamu is the author and co-author of a number of articles in accredited journals on a variety of subjects. His book, *Degrees of Excellence: Honorary Graduates of the University of South Africa, 1994 – 2014* was published in 2016. He is currently working on an historical study on Governance and Transformation at the University of South Africa, 1990 – 2015. His other research interests include popular culture, social problems and social movements.

He was a Visiting Professor at the North Carolina Central University (NCCU) in the United States. One of his recent assignments is as the Co-ordinator of the flagship Young Academics Programme at the University of South Africa.

Professor Molamu is the chairperson of the Board of Trustees of the Hugh Masekela Heritage Foundation (HMHF).

Financial Expert: Mr Bulelani Mahlangu. He qualified as a Chartered Accountant in 1995, after having completed his undergraduate and post -graduate studies at UCT. He has strong qualification in Finance/Economics, having completed a MSc in Financial Management.

At a functional level he has experience in the areas of finance, internal audit, risk management, accounting, finance strategy, organisational design, etc. He has 16 years experience at senior level having been the Chief Financial Officer at the South African Medical Research Council and the University of Kwa-Zulu Natal. Prior to that he was a Chief Director of Financial Management at Gauteng Provincial Treasury.

He also has experience in the governance area, having been a member of the Council/Board of the SAMRC and UKZN, and having been a member of various Audit and Risk Committees, including being a Chairperson of one of the Audit Committee of SASSA.

Appendix D: Methodology and Programme of Activities

On 26 June 2019, the Minister of Higher Education, Science & Technology, Dr BE Nzimande appointed Professor Chris Brink, assisted by Professor Louis Molamu, to be Independent Assessors at the University of Fort Hare (UFH). A Government notice of the appointment of the Independent Assessor was gazetted and published on 05 July 2019.

On 04 July 2019, the Department met with the Independent Assessors to brief the Assessors about the developments that led to the University Council being dissolved and replaced with an Administrator. An initial briefing pack of documents was provided. Subsequently, the Independent Assessors emailed a communique to the UFH community to introduce themselves and their terms of reference, and to invite submissions through a specially-created email address.

Methodology:

The Independent Assessment was conducted through studying documents and data (both provided and requested), conducting interviews (both with structures and with individuals, with the Assessors issuing invitations and also responding to requests for interview), a financial analysis, and site visits.

Documentation: A great volume and variety, both electronic and in hard copy, such as minutes, policy documents, official documents, reports, correspondence, written submissions, legal opinions, financial documents, media articles and social media opinions.

Number of interviews: 8 with structures, and 20 with individuals. Most interviews were conducted at UFH, and a few in Pretoria.

After an initial analysis Professors Brink and Molamu requested assistance by a Financial Expert, and DHET kindly made available the services of Mr Bulelani Mahlangu.

Programme of Activities:

Visits to the University: 22-23 July, 29-31 July, 22-23 August, 1-3 September. Most of the time was spent at the East London and Alice campuses, but the Assessors also visited the Bisho campus and the Hunterstoun facility.

Meetings in Pretoria: 4 July, 1-2 August, 18 September.

Campus site visits, mainly conducted by students: 31 July, 2 September.

Team meetings were conducted at the end of every working day.

Appendix E: Specific recommendations regarding the constitution of Council

For a number of years the institutional governance and management structures at the University of Fort Hare have taken strain

The Council as the premier governance structure was increasingly dysfunctional. The chronic and persistent crises of governance led to the debilitating incapacity of the institution to cope with the expectations of its stakeholders. Clearly, the Council, the custodian of corporate good governance, failed to live up to expectations. There were serious weaknesses in the work of the Council.

One of the intractable problems had to do with the fact that a number of members of Council did not seem to have a clear understanding of their fiduciary responsibilities. More often than not some of the members declared their loyalty, in the first instance, to be what they considered to be their respective constituencies.

Another area of concern was associated with the composition of the Council. Section 27(6) of the Higher Education Act No 101 of 1997 and the Institutional Statute which stipulate that at least 60 per cent of the members of Council must be neither employees nor students of the institution.

In addition, in accordance with the broad principles of the King 1V Report, the Independent Assessors are of the opinion that the UFH should ensure that the majority of the members of Council and its Committees are consistently in the majority in order to secure credible deliberations and sound decision-making.

For the 2017 and 2018 academic years the ratio as provided for in the legislation was clearly not adhered to at the institution. The minutes of several meetings of the Council and its Committees during this period reveal that internal members of Council tended to be in the majority.

RECOMMENDATIONS

The composition, powers and responsibilities of the Council are derived from the Higher Education Act No 101 of 1997 (as amended) and the Institutional Statute. These need to be addressed as a matter of urgency to ensure full compliance and to achieve organizational coherence and efficiency.

a) Proposed Composition of Council

External Members:

- (i) Five Ministerial appointees
- (ii) Five persons appointed by Council on the basis of their expertise and competencies
- (iii) One member elected by Convocation
- (iv) One member designated by the Provincial Government
- (v) One member designated by the Fort Hare Foundation

Internal Members:

- (i) Vice- Chancellor and Principal
- (ii) Deputy Vice- Chancellor: Institutional Support
- (iii) Two members of Senate
- (iv) Two members of the Students Representative Council
- (v) Two representatives of organized labour, one being an academic and the other a non-academic employee
- (vi) One member elected by the Institutional Forum

b) Proposed Membership of Committees of Council

Committees of Council are important because they constitute a crucial platform for the critical governance work of the institution. It is during the meetings of these committees that detailed work is undertaken.

Executive Committee

- (i) Chairperson of Council (Chairperson)
- (ii) Vice Chairperson of Council
- (iii) Chairperson of Committees
 - Auditing and Risk Committee
 - Finance Committee
 - Human Resources Committee
 - ICT Governance Committee
- (iv) One member of Senate from the two contemplated in paragraph elected by Council
- (v) Vice Chancellor
- (vi) Registrar (Secretary)
- (vii) Advisors:
 - Deputy Vice-Chancellor: Institutional Support
 - Deputy Registrar: Governance and Legal Services

The other members of the Executive Management Committee are invitees to the meetings of the Executive Committee but are not members.

Audit and Risk (Management) Committee

- (i) Vice Chairperson of Council
- (ii) Four external members of Council
- (iii) Two members elected from the employee or student representatives on Council
- (iv) Advisors:
 - Vice Chancellor
 - Chief Finance Officer

By Invitation:

- A representative of the External Auditors
- A representative of the Internal Auditors
- A representative from the Office of the Auditor General

Finance Committee

- (i) Chairperson of Council
- (ii) Vice Chairperson of Council
- (iii) Four external members of Council, one of whom must be a person with expertise in finance (The Chairperson of the committee to be elected from these four external members)
- (iv) Vice Chancellor
- (v) Advisors:

Deputy Vice-Chancellor: Institutional Support
Chief Finance Officer

Human Resources Committee

- (i) Chairperson of Council
- (ii) Vice Chairperson of Council (Chairperson)
- (iii) Three external members of Council
- (iv) Vice Chancellor
- (v) One member elected by Council from staff members on Council
- (vi) Advisors:

Director: Human Resources
Chief Finance Officer

ICT Governance Committee

- (i) Four external members of Council
- (ii) Vice- Chancellor
- (iii) Deputy Vice- Chancellor: Institutional Support
- (iv) Advisors:

Chief Information Officer
Chief Finance Officer

Remuneration Committee

- (i) The Remuneration Committee reports directly to Council on matters relating to the remuneration of members of the Executive Management.
- (ii) Chairperson of Council
- (iii) Vice Chairperson of Council

- (iv) Chairperson of the Audit and Risk (Management) Committee
- (v) Chairperson of the Finance Committee
- (vi) Chairperson of the Human Resources Committee
- (vii) One additional member who is neither an employee nor a student of the institution
- (viii) University Registrar (Secretary)
- (ix) Advisors:

Vice Chancellor
Chief Finance Officer
Director: Human Resources

Honorary Degrees Committee (Joint Committee of Council And Senate)

- (i) Vice- Chancellor (Chairperson)
- (ii) Deputy Vice- Chancellor: Institutional Support
- (iii) One representative of Senate
- (iv) Chairperson of the Deans' Forum
- (v) Vice Chairperson of Council
- (vi) Four external members of Council
- (vii) Advisor:

Deputy Registrar: Academic Affairs

Membership Committee

- (i) Chairperson of Council
- (ii) Two external members of Council
- (iii) Vice -Chancellor
- (iv) Registrar

The Terms of Reference of this Committee would be to:

- recommend the composition of the Committees of Council;
- recommend chairpersons (and deputy chairpersons) of the committees;
- review the performance of members;
- establish and maintain succession plans for members;
- keep track of annual declarations of interest by members;
- evaluate, annually, the effectiveness of Council and its committees.

The other Joint Committees of Council and Senate whose Terms of Reference and composition need to be reviewed include:

- (i) Central Academic Planning Committee
- (ii) Institutional Quality Assurance Committee, and
- (iii) Research and Development Committee

Induction Workshops

It is recommended that a two-day Induction Workshop under the theme "Governance and the Academy: The Role of the Council of the University of Fort Hare " should be organized in collaboration with DoHET for the members of the new Council.

Code of Conduct For Members Of Council

It is recommended that the Code of Conduct for members of Council is reviewed. Upon appointment to Council the new members of Council will be expected to sign the Code of Conduct. The new members will also be expected to sign the Code of Conduct annually thereafter.

Appendix F: Report to the Independent Assessors by the Financial Expert
Mr Bulelani Mahlangu
25 September 2019

The Independent Assessor has decided to co-opt additional expertise specifically to pursue all matters relating to the financial affairs of the University. The terms of reference of the Financial Expert are as follows:

1. Advise the IA on all financial aspects of the IA terms of reference, in particular terms of reference 1 and 2.
2. Accordingly:
 - Conduct a detailed analysis of the state of the UFH governance and management regarding policies and procedures pertaining to financial management and supply chain management
 - Conduct an investigation of the financial policies and procedures of UFH and its business entities, with a specific focus on internal audit processes, procurement and tender procedures, and any specific allegations of financial irregularity that may be brought to the attention of the IA.
3. Consider all financial documentation relevant to the above investigation, in particular the briefing pack provided to the IA by DHET (specifically the Report of the UFH task team of 2009 (Annexure G) and the FastTrack report of 2015 (Annexure K), as well as all Annual Financial Statements of UFH since 2016.
4. Interview, in consultation with the IA, all relevant stakeholders who may be able to assist with the above investigation, in particular the Vice-Chancellor and CFO of UFH.
5. Provide an opinion on the following matters:
 - Both the task team of 2009 and the FastTrack Report of 2015 were of the view that UFH was at that stage essentially bankrupt. Has the financial situation of the University improved since then? Is UFH a going concern in financial terms, what is the current state of its financial health, and what is the prognosis for its financial future?
 - There are indications that UFH over-recruited students, which gave rise to difficulties with NSFAS payments. What has been the effect of such over-recruitment on the financial state of the University?
 - UFH leases rather than owns its student residences. How is this circumstance reflected in the Annual Financial Statements of the University, and how does it affect the financial health of the University?
6. Provide a report to the IA on the above matters, together with any further relevant views.

1.1 DETAILED STATE OF UFH GOVERNANCE AND POLICIES PERTAINING TO FINANCIAL MANAGEMENT AND SUPPLY CHAIN MANAGEMENT

The Audit and Risk Committee and Finance Committee meetings regularly took place, even though they were not always quorate. The gaps in finance policies and procedures are prevalent even in a risky area such as supply chain, and if not immediately addressed this can expose the university to litigation and losses. A disclaimer audit opinion two years in succession not only reflects badly on the governance and management/leadership capabilities, but further confirms Ernst & Young's (EY) findings to the effect that there are significant gaps in the finance and supply chain management systems.

Specific findings

- a) Following the recommendation of the Audit and Risk Committee (ARC), EY was appointed in 2018 to assess the Finance Unit, and its determination is that the finance and supply chain system is at a rudimentary (lowest) level in terms of maturity.
- b) There following are some of the procurement related documents either in or being considered for use: 1) Supply Chain Policy approved of 2012, 2) Legal Policy (used for sourcing legal expertise), 3) ARC's Charter makes provision for sourcing expertise without going through the Supply Chain Management Unit (SCM), 4) and Draft Infrastructure Procurement and Delivery Management. This has and can create incompatible procurement practices.
- c) The university took steps to deal with the Equicent contract complications and there is clarity on the duration of the contract, however some aspects of the contracts remain unresolved.
- d) For the financial years ended 2017 and 2018 got a disclaimer of opinion, i.e. the auditors were not put in a position even to express an opinion on the financial position and performance of the university. It seems evident that management and the ARC did not deal decisively with the 2017 audit findings.
- e) At the time of issuing the Independent Assessor's Draft Report (25th of September 2019) the Finance Unit had yet been able to prepare a set of accounts (income and cashflow statements) for the eight months ended 31 August 2019.
- f) According to the CFO the university's subsidiaries and joint ventures have their own finance and supply chain management policies.
- g) Based on the analysis of the minutes of the meetings of the relevant structures, and on discussions with their senior personnel of the university, we have come to the conclusion that none of the various management and governance structures (Management Committee (MANCO), Finance Committee, (FC) and ARC) seem to have systematically and robustly dealt with the issue of financial sustainability. The university has understandably paid more attention to NSFAS related issues, but this cannot be the only focus in an industry that is faced with significant challenges even to tried and tested operating/business models.
- h) The FC and ARC meetings took place regularly, however we noted that some were in-quorate, and we also observed that the VC did not attend the majority of the ARC meetings during 2018 and 2019.
- i) The FC had only a draft Terms of Reference in place.
- j) We identified at least twelve vehicles which were not functional at the Transport Unit and we were informed their licences continued to be paid. It seems that the Transport Unit expected the Finance Unit to intervene, and in turn the latter thought that it is the responsibility of the former to process the disposals.

Recommendations

- a) To fast track the process of putting policies and procedures in place, the UFH can partner or collaborate with one of the universities in the province and pay a minimal fee for adopting their policies. The university can also take advantage of D HET as it has a good repository of financial and supply management policies, procedures and charters that are suitable for the higher education sector.
- b) The procurement processes always present a high risk as in this regard we recommend that the UFH uses the services of a legal specialist with considerable experience in procurement, to help with the consolidation of the various components and updating of the SCM policy. There is considerable procurement related case law that has emerged over the past few years, and this has to be considered when updating the policy. The university can also seek assistance from the National or Eastern Cape Provincial Treasury.
- c) Failure to resolve the valuation of land and building is part of the reason why the university got a disclaimer (audit outcome). We are recommending having the land and buildings account audited during November and December 2019, in order to give the university enough time to correct the accounts in the event of the auditors being unhappy with the valuation approach.
- d) UFH should strongly consider appointing the Auditor General of South Africa (AGSA) to audit their accounts for the two periods ended December 2019 and 2020. AGSA's audits are thorough at comprehensively addressing systemic issues especially in the areas of Supply Chain Management (they can also make a call regarding whether current or past transactions require investigation), Performance Management, and Financial Management in general.
- e) The UFH should use the services of an experienced commercial lawyer to restructure the Equicent contract, and the progress on this matter must be monitored by both the ARC and Council.
- f) The number of financial management changes required to help the CFO move the Finance Unit to a higher level of maturity cannot take place without supplementing the Unit's capacity, even if for a short period. We recommend that D HET considers assisting (including funding) by using a model similar to the SAICA/D HET Finance Management setup that was deployed at the TVET Colleges, and this should be for a period of at least two years. If not feasible, we strongly recommend that the university contracts in for twelve to eighteen months at least three experienced individuals in the following areas, 1) compliance and governance processes (including the policies), 2) commercial experience, 3) systems design. Irrespective of the approach the university adopts, these experts would report to the CFO.
- g) To address the issue of meetings that are in-quorate, one option may be to have multiple levels of quorums. E.g. to approve a strategic plan or budget 60:40 will be required, to approve a policy 50:50 or 40:60 will be acceptable, etc. Increasing the number of the members of the Sub-Committees is remains an option.
- h) FC had at some stage considered amalgamating with the ARC. For a different set of reasons, we would like to also recommend joint ARC and FC meetings (even if for the next two years) in order to deal with vast finance related issues in an integrated manner. This may also help deal with the issue of quorum, if though that will not be the primary reason. If there are five meetings scheduled in a year, two to three of these can be joint meetings, and this would still allow the ARC to protect its independence.

1.2 INVESTIGATION OF THE FINANCIAL POLICIES AND PROCEDURES PERTAINING TO INTERNAL AUDIT (IA), SUPPLY CHAIN AND TENDER PROCEDURES, AND THE INVESTIGATION OF SPECIFIC FINANCIAL IRREGULARITIES.

The outcome of the five years mandatory review of the IA unit performed in 2018 by the Institute of Internal Auditors (IIA) goes a long way towards pointing to the competence of the unit, and the presence of the critical documents such as ARC and IA Charters, IA Plan, Risk Management Policy, and risk register suggests that the university has the necessary architecture to enable meaningful internal audit assignments.

Conflict between the Chief Audit Executives (CAEs) and an executive are common for two primary reasons 1), the executive members tends to see the CAE's findings as a negative reflection on their performance, and 2) the concept of the CAE reporting to the ARC, and even having access to the board, is unique. In our assessment the conflict between the VC and CAE was caused primarily by lack of common understanding regarding what it means for the CAE to functionally report to the ARC.

Tender processes are generally very risk and looking at the minutes of the various tender committees and the tender practices, we identified several lapses which if left to persist can expose the university to litigation and incorrect decision making. Some omission, e.g. not calling out the tender price is not necessarily in transgression of the SCM policy, but failure to do this undermines one of the values of an effective tender process, i.e. transparency.

A. Internal audit (IA)

Specific findings

- a) The IA Unit was found to be Generally Compliant (an improvement on the finding by PWC in 2016 which deemed the unit Partially Compliant). There is a view that the IIA Review can be supplemented by assessments that focus on: 1) the quality of the judgements, 2) how competent the IA team is, and 3) how good the training provided is, etc.
- b) The UFH IA Unit consists of the Internal Audit, Special Investigations and Risk Management. It is a common practice to combine the internal audit with investigations. Some of the deficiencies pointed out by the IIA Review were that the IA Unit needed to use internal audit software more, and that the risk management component should not be part of the IA Unit.
- c) In our assessment the biggest tension between the CAE and the VC tended to centre around the issue of investigation, i.e. how is the reporting on these is to be conducted, and who should have access to the progress reports on these investigations. The VC strongly felt that for him to be able to lead and be accountable he needed to have access to certain information regarding the investigations. On the other hand the CAE felt that the VC's requests were tantamount to interfering with his independence, partly because according to him, some of the requests pertained to investigations that involved the VC. What is clear is there has been loss of trust and confidence in each other.
- d) The VC disputed the serious allegations made by the CAE about how, and on whom he sought information from the CAE, and interviewing them separately made it difficult for us to formulate a view regarding what was likely to have happened.

- e) The IA Unit reviews tenders above R20m before these are presented to Council for approval. During the 2018 to 2019 periods there were more than ten bids processed with values of less than R20m each, and as a consequence they were not subjected to IA tests before they were awarded.

Recommendations

- a) The university requires a written set of protocol (or a Memorandum of Understanding - MOU) detailing how the conflicts between management and the CAE are to be handled. The ARC and IA Charters may not be sufficient to constructively handle conflicts. One example relates to the ARC's authority to dismiss a CAE, given that some of dismissible offences are not linked to the technical quality of the audits. The MOU can also detail with which parties to approach in order to resolve disputes, and these parties can include the Chairperson of Council, Chairperson of the ARC, DHET, or any other independent person as can be recommended by an entity that deals with governance, e.g. the Institute of Directors (IOD).
- b) The induction of the new the Council should include a session on the role of IA and ARC (the concept of IA reporting to ARC is unique to this profession however it needs to be emphasised that external and internal auditors are conceptually similar to the extent that neither report to management), to be conducted by an entity such the Institute of Directors or a governance specialist, and the audience should include the Council and Committee members, and the members of the Extended Management Team.
- c) The whistle blow facility report should be accessible only to the Chairperson of the ARC and the VC.
- d) The IA should review all the bids, and the intensity of the procedures performed can vary depending on the range. There can be three ranges, Range 1: Bids < R10m, and Range 2: Bids < R20m, and Range 3: Bids > R20m. More procedures would be applied on Ranges 2 and 3 compared to Range 1.

B. Supply chain and tender procedures

Specific findings

- a) In respect of one bid which was processed in 2018, according to the Bid Evaluation Committee (BEC) minutes a service provider was asked to revise their quotation because of errors in their submission, and the bid price ended up being R16.34m, compared to R11.83m originally submitted. An award emanating from such a process can be legally challenged, and even set aside even if the successful bidder had not been asked to re-submit.
- b) Of the fifteen tenders processed by the university between 2018 and 2019, three were cancelled. The Bid Adjudication Committee (BAC) took a decision to cancel these because following an analysis by one of its members, it came to the conclusion that the specifications did not meet the D HET's requirements. The decision to cancel was taken by the BAC and not the Bid Specification Committee (BEC), whose mandate it is to approve or reject the specifications.
- c) A Supply Chain official chaired a BEC meeting. The BEC subsequently corrected this and acknowledged that this was not the correct procedure.
- d) On a number of occasions, the BAC, who appeared to have consistently applied their minds in their meetings, referred matters back to the BEC for further consideration. In one instance

at the prompting of the BAC, the BEC ended up re-instating two bidders who had initially been declared non-responsive.

- e) According to the SCM policy the BAC and BEC can only be chaired by a member of the EMT, but it seems that the policy did not anticipate a different type of conflict interest, i.e. a member of the EMT can preside over a bid that falls within his/her area of responsibility and influence.
- f) At the bids opening, the university does not call out the bid prices or fill in the amount on the register. This deficiency can create a room for re-submission of a bid with a lower price.
- g) In an effort to manage its contracts more effectively, to its credit the university employed a contract specialist in July 2018. A contract register is in place and part of the challenge has been to ensure that there is a contract in place where one is required.

C. Specific possible financial irregularities

C.1 Security for the VC

- a) A decision was taken to treat the matter of securing the VC with the utmost confidentiality and the Chairperson of the HR Committee was tasked with sourcing quotations from security services providers.
- b) The Eastern Cape Department of Roads and Public Works SCM official has confirmed that she was verbally requested by the Chairperson of the HR Committee to provide him with a list of the service providers who are based in the Nkonkobe Region. According to the official, there was only one service provider on the Departmental Regional's contract register, and this was Amila Security Risk Management Services (Amila).
- c) Amila started rendering their services in November 2017. According to the contract specialist there is no written contract in place, however the understanding is that Amila is on a month to month contract basis, and the CFO indicates that they intend doing a risk assessment soon in order to determine whether or not to continue with Amila.

Conclusion

The university appears to have made an effort towards ensuring a competitive procurement process. The requirement for emergency security services is something that generally can be anticipated and be planned for, given the fact that the sometimes volatile situation in the higher education sector has been with us in the recent years. Twenty two months have passed since the service provider came on board and in our view the Council should have ensured that a competitive process takes place immediately after the initial ratification.

C.2 The Landelahni Professional Technical Appointments (Landelahni) for DVC IS and Deputy Registrar: Legal positions

According to the founder shareholder and Chief Executive Officer (CEO) of N2 Growth- (previously called Landelahni), Adv Thandi Orleyn was a non-executive director at Landelahni Group Holdings between 2004 and resigned in 2008. She says that Adv Orleyn was never a shareholder in any of the Landelahni Group Holdings companies. We were able to confirm from the Companies and Intellectual Property Commission (CIPC) records that she resigned in 2008. The CEO has indicated that Ms Thandeka Mgoduso has never been a director, or a shareholder of any of the Landelahni Group Companies, and we did not see her name on the CIPC documents we had inspected.

Findings

- a) According to the Chairperson of Council the members of Council were invited to recommend names of recruitment agencies and she recommended two companies (Landelahni was one of them), their majority black ownership status being the primary consideration for her. In her view there was no conflict of interest to be declared as she had left Landelahni long time ago.
- b) The SCM official interviewed indicates that the Landelahni's quotation was going to cost the university more because it excluded the advertising costs (the university paid R230 575 though it appears that had the advertisement been done through Landelahni it would have cost the university about R69 000). According to the SCM official in their (SCM Unit) assessment both companies could do the work, and the advertising costs were going to be one of the determining factors.
- c) The SCM Manager indicates that he was opposed to the award being made to Landelahni, and had stated his reasons to the HR Director. The HR Director confirms that SCM had recommended a different company.
- d) We noted that though the SCM Manager was opposed, he subsequently supported the choice of Landelahni, and there is nothing in the SCM submission to the VC to suggest that the Manager was not supporting the award.

Conclusion: CIPC records confirm that Adv Orleyn resigned as a director in 2008 and that Ms Mgoduso was never a director. The N2 Growth CEO has also confirmed that Adv Orleyn is not and was never a shareholder in Landelahni.

Given the fact that ten years had elapsed since the Chairperson of Council resigned from Landelahni, we are of the view that more than a reasonable period had passed to necessitate a declaration of interest, and therefore there is merit to her view that she did not think that she was conflicted.

We could not find any evidence that the members of Council influenced the award of the RFQ to Landelahni. Having said that, in our view the SCM processed was compromised when the HR Director and SCM Manager supported the award to Landelahni and not to the other service provider.

C.3 Procurement Waivers

Findings

- a) The university has a procurement waiver checklist in place which details the circumstances under which procurement can be waived.
- b) Procurement process was waived for R7.3m worth of transactions in 2019 which is a dramatic improvement from R12.6m in 2018. The 2018 figure included a payment of R5.9m towards student leases as the bid process was not completed on time, and R5.3m in 2019 was paid to a project manager who oversees one of the student residence projects (part of this money is paid out to the student residence developers).
- c) R1.854m was regarded as irregular expenditure in 2018, and R149 000 in 2019. The CFO says that no one has been held responsible for the irregular expenditure, even though the Consequence Management Framework is in place.

Conclusion

There seems to be better management of the procurement waiver process in 2019 as compared to previous years, and in our view in the majority of cases the procurement waiver checklist was correctly applied.

C.4 Hunterstoun Project

Findings

- a) We sighted a document on which the VC supported a request by the DVC Institutional Support (DVC-IS) seemingly seeking permission to allow Activate and Ngonyama Okpanum and Associates (Ngonyama) to be considered a Joint Venture (JV) for the purposes of providing architectural services. In support of the request, the DVC IS described Ngonyama as an entity that understands the vision of the university. The SCM policy is very detailed on the process to be followed for an entity to be granted the status of “an accredited prospective supplier”, and the SCM Unit is responsible for doing the accreditation. The policy also defines what is meant by sole and single suppliers.
- b) The Hunterstoun Director says that she got to know about Ngonyama for the first time when she approached Activate (they had done some architectural designs for Hunterstoun before) about a planned project, and Activate’s Director indicated that given the estimated value of the project (about R1.2m), he would recommend that Hunterstoun use their local partner, i.e. Ngonyama. We spoke to Activate’s Director and he confirms this. In response to our question as to whether this planned part was part of the project that was done by Active some years before, the Hunterstoun’s Director indicates that this was a new project. The Hunterstoun Director indicates that she never got any instruction from the VC to use Ngonyama.
- c) We also noted that the subsequent request to waive the procurement process in favour of the joint venture supported by the DVC-IS, and not by the former Director Property Services. There was no indication on this document by way of a note or comment as to how the DVC IS dealt with the fact that her subordinate had not supported the waiver. He says that he did not support the waiver as he was of the view that no proper SCM process had been conducted to arrive at a conclusion that Ngonyama was indeed the only entity that understood the university’s vision.

Conclusion

We did not come across any evidence to suggest that the VC had introduced Ngonyama to Hunterstoun. Even though the VC’s support for the JV establishment did not result in an irregular expenditure, we want to highlight that had the process not been challenged and/or stopped, there was a potential for this endorsement to give the JV the sole or single supplier status, and effectively put it in a position to benefit from current and future projects without go through a transparent selection process.

C.5 Qush – cleaning services contract

Findings

- a) According to the Acting Property Services Director, in response to a request from the Qush in July 2019 regarding a 2018 annual escalation that had not been processed, he authorised a payment of R548 000. Property Services had invited the SCM's contract specialist to a discussion with Qush but he opted not to attend because in his view it was not proper to talk about an escalation when Qush was already on notice. He did notify the Creditors/Payments section about his decision not to support the payment, but it was still processed.
- b) According to the CFO a payment due in terms of a contract gets paid without him having to be approved, and it is for this reason that he only got to know about the payment subsequent to it being processed. He will be investigating to establish why the payment was processed in spite of the warning by the contract specialist.

Conclusion:

Our view is that given the fact that the escalation was provided in the tender, the payment was probably due. We note though that there was no sufficient engagement with this process by senior officials (DVC IS and CFO), which would have included asking questions about the delays on the part of the service provider, or even to establishing why the internal systems did not pick this up earlier. Had the necessary due diligence been done, this would have prevented the payment being made, if in their assessment it was not due.

Recommendations

- a) The revised SCM policy should include definitions of key concepts such as 'conflict of interest' and specify the 'cooling off period' (from what we can establish any period up to two years seem to be a reasonable period within which a person has to declare).
- b) We recommend that all Council and Committee Members, EMT, Supply Chain and Finance Units staff should annually declare their interest. This process can be systematically extended to other staff members at a later stage.
- c) The Internal Audit can as an immediate step access the ID numbers of the EMT, Supply Chain and Finance Units, and trace these to the CIPC information of the service providers.
- d) As one way of minimising potential tender risks, UFH should consider bringing in additional procurement specialists (there are a number of service providers who specialise in managing tenders), and the SCM policy can be structured such as to allow the appointed service provider to run the with the entire Specification, Evaluation and Adjudication process.
- e) All people who participate in bids process should undergo a training on how to manage a tender, and the training should include the latest case law.
- f) In the interest of managing potential conflict of interest, there should be a provision that regulates who can be a chairperson of BEC or BAC.
- g) UFH should do immediately do the risk assessment and if required so go through a bidding process, and use the State Security Agency to vet the shortlisted companies. The VC may have to try and engage with the Provincial Head of SSA.

- h) We strongly support the SCM consideration of having UFH register with the National Treasury's Central Supplier Database (CSD) in order to ensure a more credible supplier database.

C.6 Credit Card

The following is the list of items bought with the credit card between August 2018 and July 2019. (At the time of writing this report we had not yet been provided with the statements for the periods May 2019 to July/August 2019).

Items	Party/Parties	Amount
Hotel Accomodation	VC	4 703
Meals	Council Members Meeting to brief the Minister	1 160
	VC briefs the Chancellor and other stakeholders	3 498
	VC meets with Gauteng UFH Alumni Chapter	2 057
	Induction of a DVC	642
Gift	Retiring employee	4 128
Travel	VC	1 357
		17 545

Findings

- In April 2018 the Council approved the issuing of an official credit card to the VC to enable him to effectively engage with potential funders and external stakeholders. The costs were to be managed through the Office of the CFO.
- The CFO indicates that due to AFS pressures, he has not been able to review the bank statements.
- At the time of completing the report the VC had not come back to us regarding why the card was spent on travel and accommodation. The CFO confirms that there have been instances where for some reasons the VC's flights or accommodation were not booked by Finance/SCM and this resulted in the VC having to use the card.

Conclusion

The credit card seems to have been used for legitimate expenditure, even though we are of the view that the gift for a retiring employee should be accommodated by the university finance system in general, as it does fall into the category of stakeholders and external funders.

Recommendation

There should be a credit card procedure, which amongst other things details the restrictions on the use of the card and detail the responsibilities of the user and the Finance Unit. The procedure should cover the use of petrol cards.

2. CONSIDERATION OF THE UFH 2009 TASK TEAM and FAST TRACK REPORTS, and AFS FROM 2016.

The university has made concerted effort towards addressing the concerns raised in the two reports, as demonstrated partly by the fact that the Finance Committee had the Fast Track Report. We are of the view that had the university robustly dealt with all the findings of the two reports (its five years after the Fast Track Report and ten years after the Finance Review Report) all except systemic issues would have been addressed by now. Some of the outstanding issues are material.

Listed below are some of the key issues raised by the two processes (our own emphasis), over and above the determination that the university was showing signs of bankruptcy:

Key issues raised		
Task Team 2009		Findings/Current Status
1	Post Retirement Medical Aid Obligation increasing.	PRMA can only be resolved if there is enough surplus cash.
2	NSFAS claims not processed by the university.	It is now a NSFAS process but there are still challenges.
3	Cost recovery is poor.	Cost recovery in general is still a challenge.
4	Student debt management problem.	A debt collector is used and NSFAS additional funding but there are still challenges.
5	Leave calculation incorrect.	Seems correct, a R4m adjustment was processed at end December 2015.
6	Utilities audit to be done.	Still to be done.
7	Poor management of outsourced services process.	University has changed to in-sourcing.
Fast Track Review 2015		Findings/Current Status
1	Various taxes not paid to SARS.	Tax practitioner was appointed at the problem seems resolved.
2	Bursaries and Fee Waiver Policy not in place.	Policies still to be developed.
3	Projected accounts showing a negative balance.	Process better managed and closely monitored by the Finance Committee
4	Supply Chain Policy often ignored.	Fewer procurement waivers in 2019 compared to 2018, there is progress.
5	Main lease agreement not in place (Equicent).	Agreement in place but needs further refinement.
6	UFH funding a bankrupt entity - UFH Solutions.	UFH Solutions finances have improved significantly.
7	Telephony and utilities - not optimal	Still to be addressed.
8	Staff members inter-campus travel not controlled, there are cases of over-claiming.	No process in place yet to manage this.

Further finding

The Fast Track Report has been submitted to the FC for their review.

Conclusion

There is still a lot to be done by the university to extract in-efficiencies (prevent over-claiming, perform utilities audits and do cost recovery). Financial sustainability remains an important consideration and will only be systematically addressed once the university finalises its finance plan.

Recommendation

- a) We support the approach that has been suggested by the CFO of consolidating all findings (2009, 2015, EY and 2019 audit findings).

- b) There are many old and even new findings, and therefore prioritisation is critical.
- c) The Council and its Committee have to actively manage the process of revitalising the Finance Unit.

3. UFH 2009 TASK TEAM AND 2015 FAST TRACK REPORT (BOTH SUGGESTED THAT THE UNIVERSITY WAS BANKRUPT). IS UFH A GOING CONCERN, AND WHAT IS ITS CURRENT HEALTH, AND FUTURE PROGNOSIS

There are several models that are used to describe “bankruptcy” and if the findings of the two processes (2009 and 2015) regarding “bankruptcy” described a situation where the university was already or likely to experience financial distress, i.e. have short term cash flow challenges, then we agree with the characterisation of the university as having signs of being “bankrupt”.

A definition of “bankruptcy” which implies the ability of the creditors to forcibly liquidate an entity that is considered insolvent (in a net liability position) or gain some kind of access to its assets through court action, is in our view not an appropriate tool for assessing the financial standing of a public higher education institution. Part of the complication with this formula (net liability position) is that a significant portion of the universities’ assets cannot be sold in an open market, and a different formula may be required to make an assessment.

	2018	2017	2016	2015
Income	989 632	914 848	815 822	711 780
Salaries	- 546 805	- 495 724	- 420 150	- 385 790
Operating Expenditure	- 366 017	- 361 725	- 525 931	- 271 105
Operating Surplus/(Deficit)	76 810	57 399	- 130 259	54 885
Potential NSFAS losses	- 40 000	- 40 000		
	36 810	17 399		
Overall cash generated by operations	397 515	204 378	196 510	28 491

Specific findings

- a) The operating cash equivalent position (i.e. excluding depreciation) had increased from a deficit of R130m as at end of 2016 to a surplus of R76m as at end of 2018, signifying a R206m improvement in a space of two years.
- b) Overall cash generated by operations has been on the increase during the past three years (from R196m in 2016 to R397m in 2018).

The ability to maintain the upward trajectory in operating surplus and cash is currently largely dependent on the extent to which UFH gets the cash due to it from NSFAS. The CFO indicates that there exists a risk of the university not getting about R80m of the student debt relating largely to 2017 and 2018.

- c) The increase in the NSFAS allocation has made a big difference, and with respect to the 2013 to 2015 historic debt UFH received R300.6m.

- d) Included in the 2018 and 2019 D HET allocation is an amount of R49m per year being a grant to cater for poor and missing middle students. Per D HET's allocation, the grant will be reduced to R32m in 2020 and R16m in 2021 and nil in 2022.
- e) The cash component relating to the Deferred Income (DI) (R1.373bn) has been calculated at R319m. The university uses separate bank accounts to manage the unspent portion of the DI. Based on our own calculation (we took the additions to land and buildings for the years 2009 to 2018), the balance of R319m seems reasonable, and this is supported by cash. The test was critical for us perform in order to determine if the university is using infrastructure grants to fund its operations, and as at 31 December 2018 this does not appear to be the case.
- f) From a strategic perspective (a factor confirmed by the VC), has been urging the University to change the focus from just being a historically disadvantaged by to a university that can compete at all levels. He wants to reach a level where UFH can attract research and other forms of funding. He reasons that this will result in the university being able to recruit experienced and reputable academics, and this will in turn attract more funding
- g) The university did some detailed costings in the past but seemingly these were not ever used to assist in doing a cost benefit analysis of programmes offered or the sustainability of the multi-campus arrangement.

Opinion

Past: With respect to both the 2009 and 2015 processes, we are of the view that they were correct to say that the university was showing signs of 'bankruptcy', i.e. financial distress.

Current: The surplus generated in 2017 and 2018 is a sign that some of the interventions e.g. instituting zero based budgeting (and not permit deficit budgets) and increase in NSFAS yearly funding have made significant contribution to the finances of the university. The cash injection of R300.6m from NSFAS in 2017 has gone a long way towards improving the short term liquidity of the university and the recovery of the bulk of the R80m is critical in order to significantly decrease the chance of having financial distress in the next twenty four months.

Future: The determination of whether the university is a going concern is depends on a number of factors, and critical factor being whether or not D HET would be willing to inject more cash into the university or allow it to divert grant money towards operations in the event of financial distress. The future cost structure will also depend on the overall cost of insourcing (at the time of preparing this report partial insourcing had been implemented). We also note the willingness by a development funding institution (DFI) to lend an amount of R247m to the university as one sign of their confidence in the university's ability to continue functioning in the foreseeable future.

Recommendations

- a) The DHET should consider sourcing expertise to design a risk based model (this could include econometric or actuarial science models) that serves as an early warning system to determine whether or not an institution is likely to have problems. Inputs other than finances will have to be incorporated into the model.

- b) We note the efforts of the student leadership, the management and administrator in trying to resolve the issue of outstanding NSFAS money, and we of the view that the efforts should be intensified.
- c) The CFO needs to detail a financial sustainability plan that has timelines and shows priority areas. The university should derive some of the VC's and CFO's KPIs for the next 2 to 3 years.
- d) As part of the financial sustainability plan, the CFO should prepare a three cashflow projection, to be presented at the FC and Council meetings for review.

4 OVER ENROLLMENT AND IS IT LINKED TO THE NSFAS CASH RECOVERY PROBLEMS, AND THE EFFECT ON THE FINANCIAL HEALTH

According to the Manager - Planning, UFH and D HET have agreed on new targets for the new cycle of 2020 - 2024. The final approval from D HET has not yet been communicated.

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Agreed upon targets	13 075	13 795	14 450	15 200	15 945	17 310	17 673	18 048	18 842	19 260
Actual enrolment	13 458	13 831	15 426	16 982	16 908					
Change	383	36	976	1 782	963					
NSFAS approved		8 865	8 995	9 834	7 400					
Change			130	839						

Findings

- According to the Enrolment Monitor document prepared by the Manager, UFH has been over enrolled throughout the 2015 - 2019 cycle. His explanation for this is that university was put under pressure to register more students and that should explain the big increases between 2017 and 2019.
- The 2019 NSFAS approved number is not final as there are registration profiles still to be approved by NSFAS. There is a dispute with NSFAS as to whether the registration profiles have been uploaded or not. It appears that more than it being a problem of NSFAS not being in position to fund certain students because they presumably do not meet the requirements, it is rather a problem of how efficient the process of NSFAS registration is, and to what extent students can submit the appropriate the required documentation.

Opinion

Based on the trend in the past, we are of the view that the university will be able to stay within the new targets. We also did not come across evidence suggesting that the problems with NSFAS are linked to over-enrolment.

5. HOW ARE STUDENT RESIDENCE LEASES REFLECTED IN THE AFS, AND HOW DOES THIS AFFECT THE FINANCIAL HEALTH OF THE UNIVERSITY

Currently the accounting rules distinguish between financial and operating leases. Payments made to Equicent (lease property and leaseback developed property arrangement and the university owns or will own the property at the end of the contract) are classified as finance lease and operating leases are payments made to various landlords. With effect from 2019 there will be no distinction made financial and operating, and for the purposes of our analysis we are going to focus on the cash-outflow (equivalent cash payments)

The student leases are reflected as follows:

Element	Source	AFS	Equivalent Cash Payments					
		2018	2018	2019	2020	2021	2022	2023
Finance lease cost - 4 075 students (Alice)	Statement of profit or loss	104	103	112	123	136	148	
Operating lease cost - 3621 students (EL)	General expenses	99	99	108	118	128	140	152
		203	202	220	241	264	288	152
DBSA Loan Repayments						39	39	39
Total Cash Outflow						303	327	191

Findings

- The AFS reflect a student residence income of R217m as at 31 December 2018, however we are not in a position to compare this to the cost of R202m because the auditors found material errors in the calculation of R217m.
- DBSA loan repayment largely relates to the construction of the Student Village (1437 beds) and the university is working on the basis that this will be funded fees from NSFAS paying students.
- The Equicent contract will cease in 2022 and to a great extent this will free up cash of up to R148m per annum.

Opinion

Given the auditors' disclaimer on the student residence revenue we are not in a position to determine as to whether the student fees can sufficiently cover the cost of running the residences. Regarding the operating lease cost of R99m per annum, for an equivalent loan repayment over a twenty year period, the UFH could probably get between R900m and R1bn loan from a DFI 9 (assuming interest rate of 9-10%). Given the estimated cost of R275 000 per bed, the university could provide as many as 3 600 beds (R1bn/275 000) and therefore avoid a perpetual expense in the form of rentals paid to landlords.

Recommendation

As part of the university's financial sustainability plan, they should explore the possibility of the university buying land in order to build its own residences.