

2021/22

Annual Report of the Office of the
Health Ombud



Ihhovisi Lokulandela Amaqophelo Ezempilo
Office of the Health Ombud
Kantoro ya Mosekaseki wa Maphelo







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General Information

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Abbreviations

AOMA	African Ombudsman and Mediators Association
AORC	African Ombudsman Research Centre
BHC	British High Commission
BHPSA	Better health Programme South Africa
CEO	Chief Executive Officer
COVID-19	Coronavirus Disease
HOD	Head of Department
ICU	Intensive Care Unit
IOI	International Ombudsman Institute
MCU	Mental Health Care Users
MEC	Member of the Executive Council (Provincial)
NDoH	National Department of health
OHSC	Office of Health Standards Compliance
PACAC	Public Administration and Constitutional Affairs Select Committee
UK - PHSO	United Kingdom Parliamentary and Health Services Ombudsman
SA - OHO	South African Office of the Health Ombud

1 Preface by the Health Ombud

This 2020/2021 reflects the activities of the Office of the Health Ombud in supplement to the report provided by the Office of Health Standards Compliance (OHSC) under programme 3.

Our offices continue to grow and work together productively despite the constraints we both face. Hopefully, the Parliamentary Health Portfolio Committee will accelerate the resolution of these outstanding matters of Bills, budgets, staffing, and independence of the OHO and the OHSC.

A new dimension to this report is a sample of feedback statements the office received from complainants through the Call Centre and Complaints Unit. These are all reassuring, and inspiring and are important to the staff of the office as a whole.

Over the period of six years, there has been an increase in the total number of complaints and an increase in the percentage resolution of these complaints. The complaints have increased by 4.3-fold and over 83% were resolved within the prescribed 25 days.

The lessons of the Life Esidimeni continue to educate our office. Currently, the Pretoria High Court in Gauteng under Judge Mmonoa Teffo is in progress in an inquest into the death of 144 Mental Health Care Users (MHCU) an essential accountability process in this national tragedy. The Office eagerly awaits the outcome of this inquest. The report of the Health Ombud on this investigation has stood the test of time and was released on the 1st of February 2017. It has been the subject of several senior counsels including former Deputy Chief Justice Dikgang Moseneke and retired Judge President Bernard Ngoepe.

The other lessons learnt are that high-risk complaints are complex in their investigations and subject to several legal challenges of appeals and high-court reviews as these impact institutional reputations and people's professional careers. They often take a long to investigate to reach finality.

The office has continued its interactions and interconnected with sister organisations such as the International Ombudsman Institute (IOI) and the African Ombudsman and Mediators Association (AOMA). The office has registered as a member of AOMA.

The Office launched the twinning agreement between the Office of the Health Ombud of South Africa and United Kingdom (UK) Parliamentary and Health Service Ombudsman (PHSO).

I am grateful for the support of my Personal Assistant, Ms Linda Jiyane, my senior colleagues, Dr Donna Jacobs, Ms Ntombi Ndukuya, Ms Helen Phetoane, Mr Douglas Mapheto and all the staff in the Units. Regrettably, we lost the services of Mr Monnatau Tlholoe. We are grateful for his service and wish him well in future.

We continue to receive support from Dr Sipiwe Mndaweni, the CEO of the OHSC, the Board of the OHSC under the chairperson of Dr Ernest Kenoshi and the staff of the OHSC. Finally, we are grateful for the continued support and leadership of the Minister of Health Dr Joe Phaahla, his Deputy, Dr Sibongiseni Dhlomo and the staff of the National Department of Health (NDoH).



Professor Malegapuru W Makgoba

MB, ChB (Natal), DPhil (Oxon), FRCP (Lond), FRS (SA), Foreign Associate Members of the National Academy of Medicine (USA), and OMS.

Health Ombud: Republic of South Africa

Date: 27th/07/2022

2 Complaints Management Programme

The overall mandate of the Complaints Management Programme is to consider, investigate and dispose of complaints relating to breaches of the prescribed norms and standards in a fair, economic and expeditious manner.

The Complaints Management Programme comprises three distinct but inter-related programs, namely: Complaints Call Centre; Complaints Assessment Unit; and Complaints Investigation Unit.

2.1. Human Capital

During 2021/22, the Complaints Management Programme operated at 74% of its intended human resource complement – with 20 of 27 posts filled. Six of these posts were funded on a contract basis within the Complaints Assessment Unit, and they made a significant contribution to reducing the backlog in cases requiring assessment.

2.2. Complaints Call Centre

The purpose of the Complaints Call Centre is to receive complaints from the public regarding breaches of norms and standards by health establishments through calls, walk-in submissions, email, and written letters. The call centre staff register, record, and screen all complaints received and refer to the next level as appropriate. All low-risk complaints are addressed at the level of the call centre. All complaints that receive a medium rating are referred to the Complaints Assessment Unit. All complaints that receive a high and extremely high-risk rating are referred to the Complaints Investigation Unit.

Table 1: Overview of Complaints received since the inception of the Call Centre

Financial year	Complaints	Year on year change
2016/17	730	-
2017/18	1122	153.7%
2018/19	1904	169.7%
2019/20	2083	109.4%
2020/21	2429	116.6%
2021/22	3132	128.9%

The table above depicts the caseload for the six financial years; 2016/17, 2017/18, 2018/19, 2019/20, 2020/21 and 2021/22 financial years.

The number of people utilising the Complaints Centre and Assessment Unit has grown steadily over the past five years. In 2021/22, the Complaints Call Centre saw a 28.94% year-on-year increase in complaints received and registered – that is, 3132 complaints, compared to 2429 in 2020/21. This growth is in line with pre-COVID-19 levels, which is gratifying in light of the difficulties posed by the COVID-19 pandemic and related restrictions.

The Call Centre achieved 83% of its indicator; a variance of 8% in comparison to the target of 75%. Measures for remote working appear to have been effective in ensuring continuity. They included diverting calls to the phones of Call Centre staff and enabling remote access to the online complaints management system. It appears the growing utilisation of the Call Centre is due to complainants' preferring to appeal to the Office of the Health Ombud rather than seek resolution at the health establishment level.

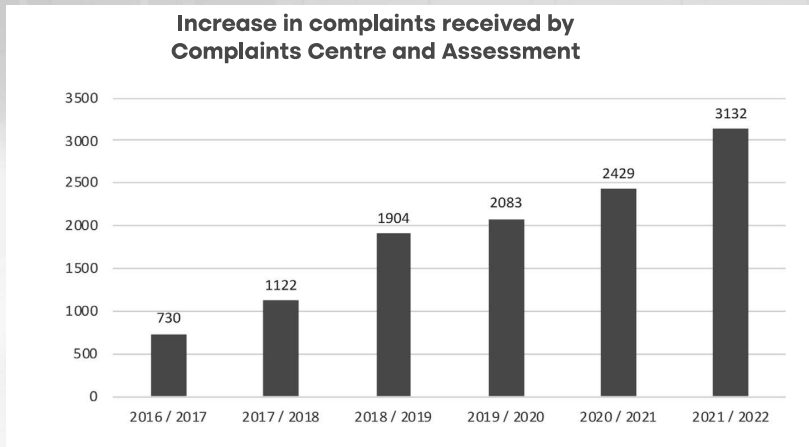


Figure 1: Increase in complaints received by Complaints Centre and Assessment

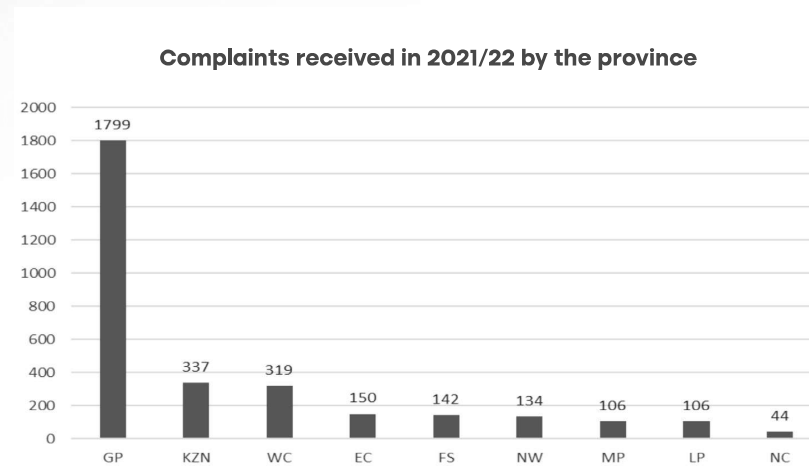


Figure 2: Complaints received in 2021/22 by the province

By far the greatest number of complaints – 57% of the total – were received from Gauteng, with the Western Cape and KwaZulu-Natal recording similar numbers of complaints. The figures indicate that the OHO has a footprint in all provinces. The proximity of Gauteng to OHO and the confidence of residents in using reporting systems may be a contributory factor to the significantly higher share of complaints received from this province.

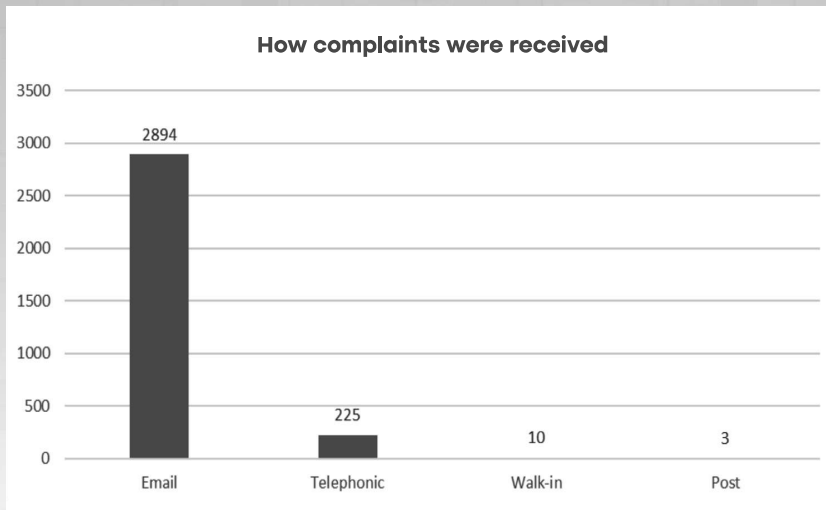


Figure 3: How complaints were received

In 2021/22 financial year about 92.4% of complaints were received through email, suggesting that they are from a section of the population that is literate and has access to technology. Virtually all other complaints were phoned into the Call Centre. In 2020/21 a lower proportion of complaints was received by email (88%) than in this reporting year and 7% were registered by phone. It is possible the conditions prevailing due to COVID-19 affected complainants' choices.

Complaints received by risk classification

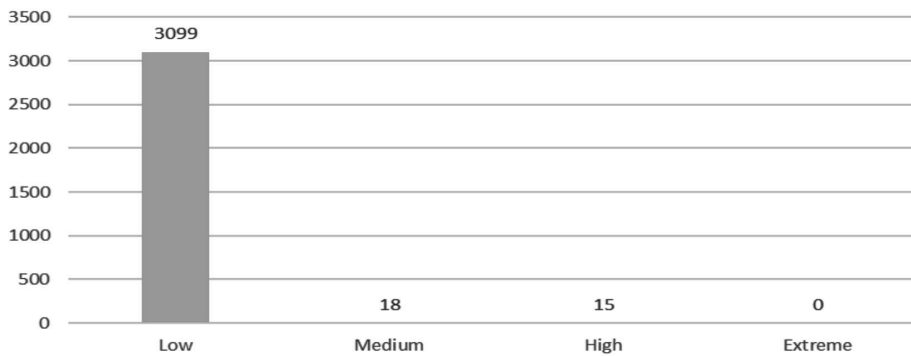


Figure 4: Complaints received by risk classification

Nearly 99% of complaints received were classified as low-risk and many should have been resolved by health establishments. Call Centre complaints officers facilitated the resolution of such complaints by contacting the relevant health establishments and mediating to ensure a satisfactory outcome.

All medium, high- and extreme-risk cases that involve serious breaches of promulgated norms and standards were assigned for assessment or investigation.

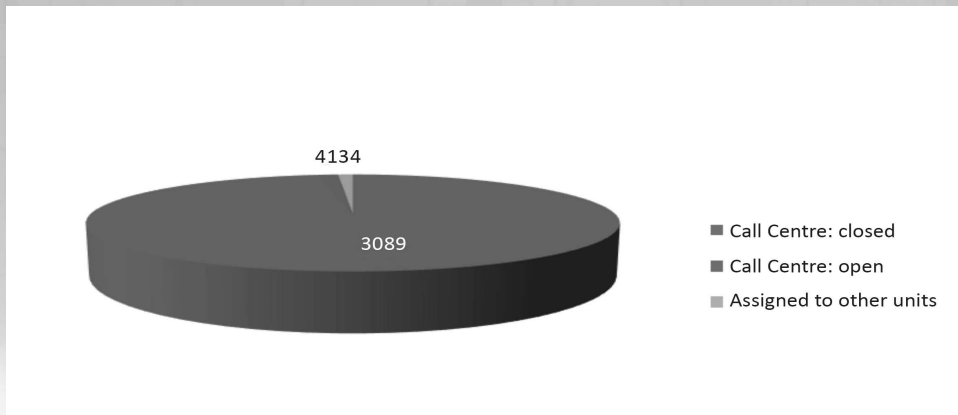


Figure 5: Status of complaints received during 2021/22 financial year

The overwhelming majority of complaints logged were closed by the Call Centre, of which 83% were closed within 25 days which was well within the target of 75%.

Results from satisfaction survey of complainants:

During this period the staff in the Complaints Call Centre received praise from complainants whose cases were resolved.

Notable examples include the following:

"I'm very happy with the office of health since I told you about my problem it's was quick in the hospital keep it up guys you deserve good things thank you so so much."

"Complain handled professionally and forwarded to the right direction in ensuring service to our people."

"I would like to thank Stella Hartenburg for her perseverance and determination to get answers to my problems. Without her help, I'm sure I would have landed in a very serious medical problem. With a response from doctors after 3 months, I'm sure the way forward is now secure. Again, a very big thanks to her and the team she works with. It restores faith in the system."

2.3 Complaints Assessment Unit

Sub-programme: Complaints Assessment Unit

The purpose of the Complaints Assessment Unit is to assess medium risk-rated complaints and either propose ways to resolve them or refer them to the Investigation Unit for investigation. In some instances, complaints are referred to other entities which have jurisdiction over the particular type of complaint.

The Complaints Assessment Unit has been under-resourced and has carried a substantial number of open cases from one year into the next. At the beginning of 2021/22 financial year, the unit had a total of 112 backlog complaints and managed to resolve 105 of these. This meant the unit closed the financial year with seven backlog complaints and five open complaints, compared to 285 at the end of 2020/2021 financial period. The

unit also managed to resolve 39 new complaints within 30 days of receiving feedback from the complainant and/or health establishment. Therefore, the team managed to resolve a total of 144 cases during 2021/22 financial year.

The Assessment Unit referred seventeen cases for investigation during this period. The indicator achievement was at 27%; a variance of 28% in comparison to the target of 55%.

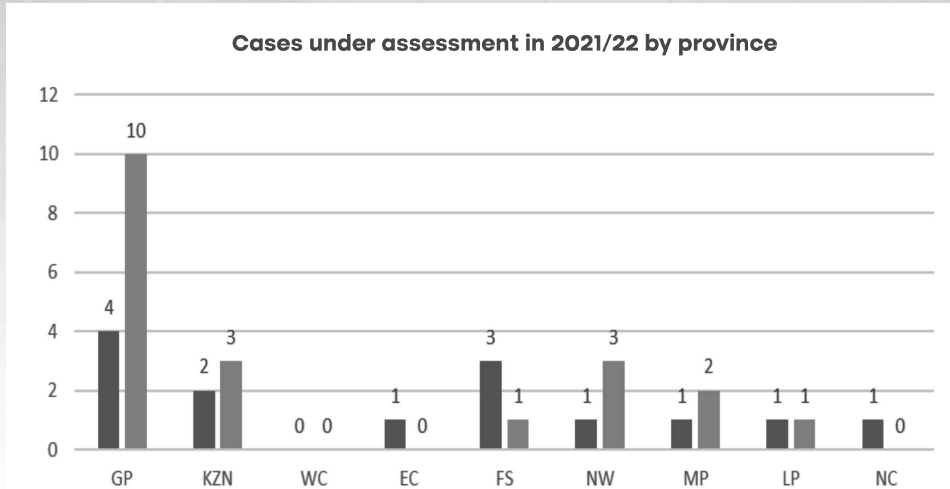


Figure 6: Cases under assessment in 2021/22 by province

Resolution of Backlog Complaints - Complaints Assessment Unit

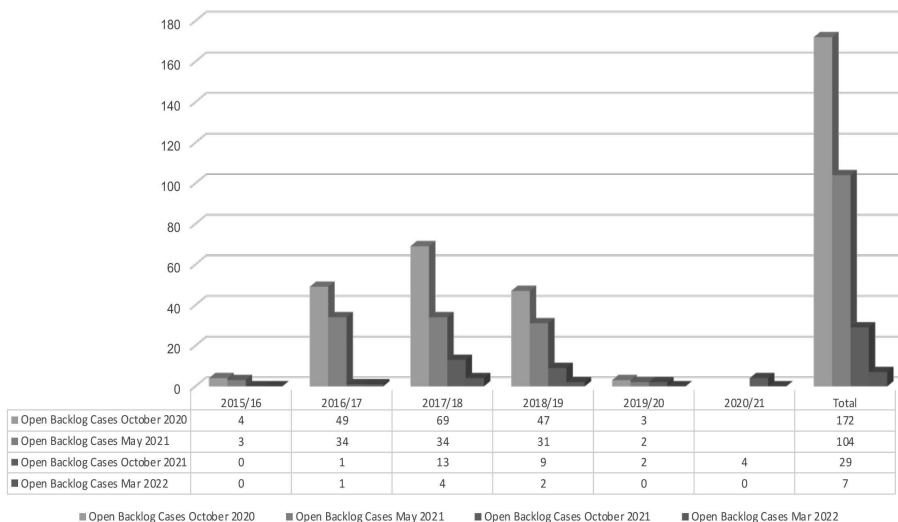


Figure 7: Resolution of backlog cases

Overall, there has been a 96% (165/172) reduction in the number of backlog complaints between October 2020 and March 2022. The Complaints Assessment Unit team has expended tremendous effort to reduce the backlog of complaints. It is envisioned that the resolution of backlog complaints by the end of the financial year will contribute positively to the attainment of the output indicator "percentage of user complaints resolved through assessment within 30 working days of receipt of a response from the complainant and/or health establishment" in the next financial year.

Results from satisfaction survey of complainants

During this period the staff in the Complaints Assessment Unit received a significant amount of praise from complainants whose cases were resolved, with some acknowledging the role of the COVID-19 pandemic in delaying the resolution of their complaints.

Notable examples include the following:

"I really appreciate how you guys handled my complaint and always gave me feedback on the situation. Keep up the good work you guys are doing." Kind regards Junaid Isaacs.

"I think if covid 19 was not on the way, you would have completed my complaint in time. But I Wana sent my gratitude of appreciation to the team for your sterling job. God bless you and your families. Thank you".

"Thank you very much for your assistance in resolving this matter, it's highly appreciated. Regards M.P Rikhotso".

"Your intervention and thorough investigation are highly appreciated. The consideration, understanding and excellent service of Mr Senyolo were remarkable. We hope that Vitalab will arrange the redress meeting in a spirit of goodwill to set our minds at ease that this type of incident cannot again be repeated." Kind regards The Spector Family".

"Thanx for the detailed report. On behalf of the family I really thank you. You have done a wonderful and excellent job."

"I really appreciate your help and I'm satisfied with how you handled my case." Regards LT Msimango".

Other Complaints Assessment Unit achievements

- a. Complaints Call Centre on track with the achievement of its performance indicator.
- b. The number of backlog cases reduced from 112 to 7; a 96% reduction.
- c. Successful registration of the Health Ombud to the African Ombudsman and Mediators Association (AOMA).
- d. Retained the surplus funds for contract employees; posts readvertised and filled.
- e. Two abstracts from the unit were accepted as poster presentations at the 2020 ISQua Conference, which was postponed to 2021, due to lockdowns resulting from the COVID-19 pandemic. The two abstracts were titled:
 - Life Esidimeni investigation: lessons and implications for the health sector.
 - Reflections on compliance with complaints management in the public health sector of South Africa: OHSC inspection findings.

2.4 Complaints Investigation Unit

The Investigation Unit is comprised of two sections, namely: Healthcare and Legal. Cases handled by the unit are mainly high and extreme risk-rated complaints that require a robust analysis and investigation process. The team operates with vacancies of Director: Complaints Investigation (1), Administrator (1), Investigator: Legal (1) and (2) Investigators (Health). An Administration Officer was appointed in September 2021 to provide administrative support for the two sections.

The 2021/22 financial year marks the 4th financial year that the unit operated with the vacancies of the Director: Complaints Investigations, Administrator Complaints Investigations, two Investigators (Health Cases) and one Deputy Director (Legal) attributable to funding limitations. The situation mentioned above contributes to the prolonged turnaround time for complaint resolution.

The lessons drawn over the four financial years were that while it is crucial to resolve the complaints within the timelines stipulated by the legislation, it is equally essential to ensure a balance between timeliness and the quality of the output.

The figure below depicts an overview of cases investigated and resolved through investigation over the three financial years; 2019/20, 2020/21 and 2021/22.

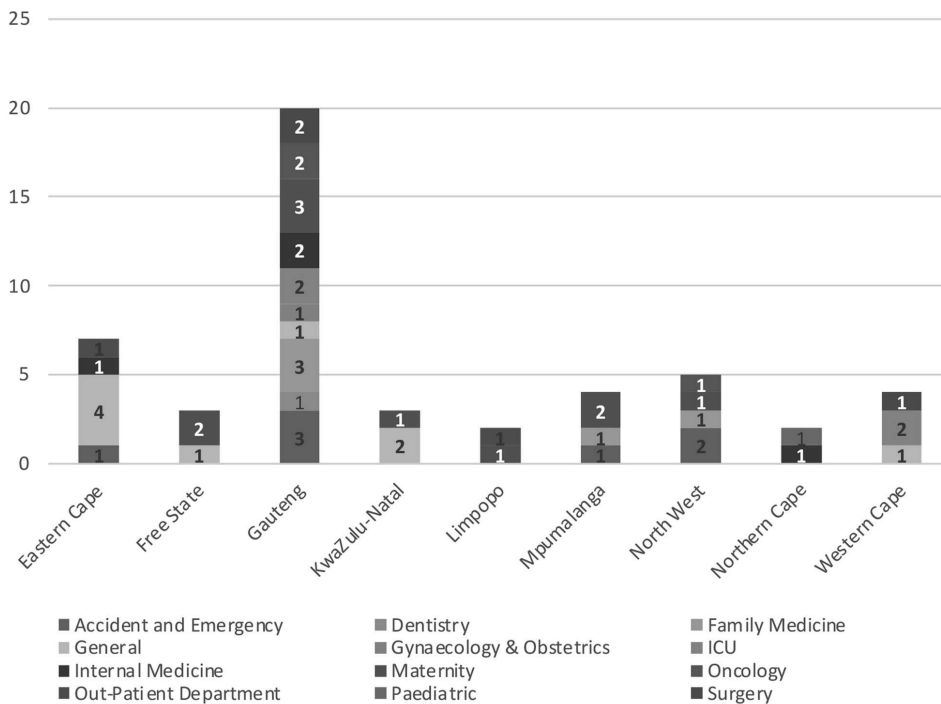


Figure 8 above illustrates 50 cases resolved through investigations nationally per discipline, during the three financial years (2019/20 to 2021/22).

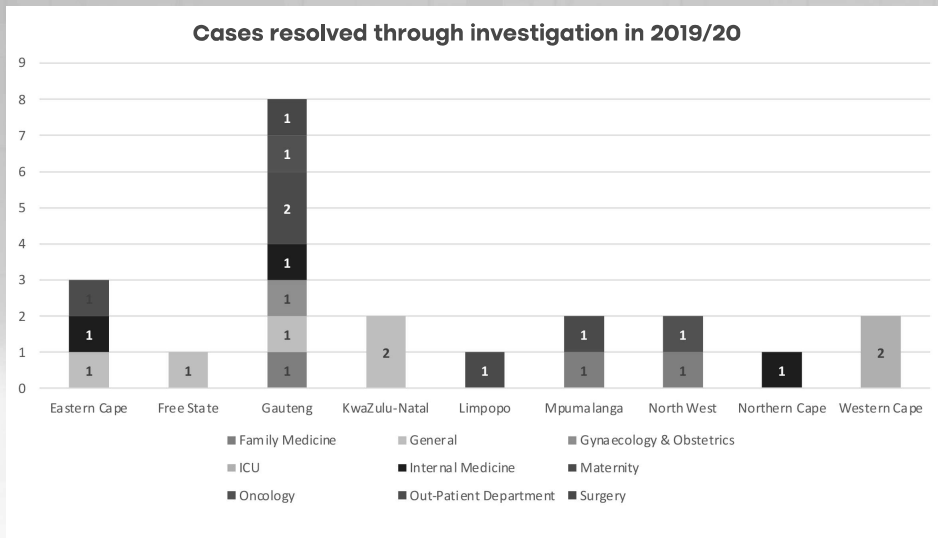


Figure 9: Cases resolved through investigation per discipline in the 2019/20 financial year

A concerted effort was made to investigate and resolve newly assigned backlog cases emanated from the previous financial years. A total of 22 cases were resolved in 2019/20 financial year. In 2021/22 financial period, five cases were resolved, and 23 cases were resolved during 2021/22 financial year.

The figure above illustrates the cases investigated and resolved through investigation in the 2019/20 financial year. A total of 22 cases were investigated and resolved. Of the 22 cases (3/22), 13,6 % emanated from Eastern Cape regarding Internal Medicine, General and Outpatient departments.

A total of (8/22)36,3 % emanated from Gauteng regarding the following disciplines: General (1), Family Medicine (1), Gynaecology and Obstetrics (1), Oncology (1), Internal Medicine (1), Maternity (2) and Surgery (1).

Free State (1/22) 4,5% received regarding General discipline. KwaZulu-Natal (2/22) 9%, Limpopo (1/22) 4,5%, Mpumalanga (2/22) 9%, North West (2/22) 9%, Northern Cape (1/22) 4,5%, Western Cape (2/22) 9%.

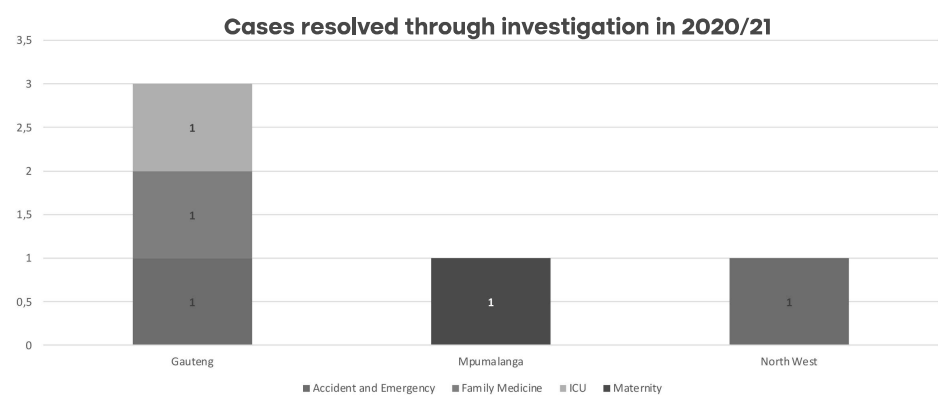


Figure 3: illustrate the cases investigated and resolved in the 2020/21 Financial Year

The figure above reflects the performance attained during the COVID-19 pandemic in 2020/21.

The unprecedented crisis has significantly impacted the performance of the Complaints Investigations, mainly conducting onsite investigations. A total of five cases were investigated and resolved. In three of the five cases (3/5), 60% emanated from Gauteng regarding Accident and Emergency (1), Family Medicine (1) and ICU (1).

Mpumalanga (1/5) 20%, one case investigated and resolved was related to the Maternity discipline and one from the North West (1/5) 20% related to Accident and Emergency discipline.

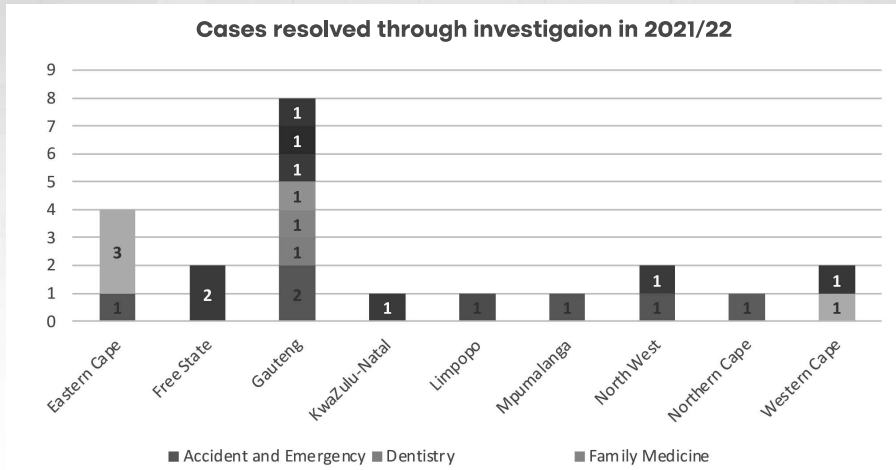


Figure 4: illustrates cases investigated and resolved through investigation in 2021/22

In the 2021/22 financial year, significant strides were made to resolve 23 Cases. A total of (9/23) 39,1% of resolved cases were from Gauteng regarding the following disciplines: Accident and Emergency (2), Dentistry (1), Family Medicine(1), Intensive Care Unit (ICU) (1), Internal Medicine (1), Maternity (1) and Surgery (1).

Four of the 23 cases (4/23), 17,3% were received from Eastern Cape regarding General (3) and Accident and Emergency (1). In the Free State (2/23), 8,6% both were Maternity, KwaZulu-Natal (1/23)4,3% regarding Maternity, Limpopo (1/23) 4,3% outpatient, Mpumalanga Accident and Emergency (1/23) 4,3%, North West (2/23) related to Maternity (1) and Accident and Emergency (1).

Northern Cape (1/23) 4.3% was regarding Paediatrics Western Cape (2/23) 8.6% regarding General (1) and Surgery (1) disciplines.

Appeal:

The Health Ombud released an investigation report into the circumstances surrounding the care and death of Mr Shonisani Lethole at Tembisa Provincial Tertiary Hospital on the 27th of January 2021. In April 2021, the Office of the Health Ombud received notice of appeal from the two officials out of the 31 implicated officials in the report. A Tribunal was established by the Minister of Health and held hearings on the 5th of October 2021. The OHO and appellants are still awaiting the outcomes. The OHO was assured that the findings of the 29 other members who did not appeal will stay.

Legal Issues:

The Ombud received legal opinions on the issues mentioned below, that almost hindered the progress of the Ombud's investigation:

- The first issue relates to an invitation by one of the health establishments that was under investigation by the Ombud, to address a summit on fundraising.
- The second issue relates to the doctor who was a key witness in the case, was reluctant to be interviewed and instructed the attorneys to defend him against the investigation team.
- The third issue relates to the two complainants who lodged their complaints with the Ombud and instructed an attorney to assist them in instituting civil proceedings against the health establishment under investigation by the Ombud. The attorney joined the Ombud in the legal proceedings through no relief was sought against the Ombud.
- Through the intervention of the Legal Complaints subunit, the possible conflict of interest and the civil litigations were avoided, and the investigation proceeded in a fair, economical and expeditious manner.

3. The PHSO and the OHO Twinning Agreement progress update

Progress has been marked since the official twinning agreement, which was signed between the United Kingdom (UK) Parliamentary and Health Services Ombudsman (PHSO) and the Office of the Health Ombud (OHO) of South Africa.

A total of five learning exchange sessions were held between the PHSO and the OHO. Four learning sessions were hosted by the Better Health Programme South Africa (BHPSA), which is a health system strengthening programme supported by the British High Commission (BHC) in Pretoria and delivered by Mott MacDonald.

The sessions mentioned above were chaired by Vannessa Kruger, Oversight and Accountability Workstream Lead, BHPSA.

The PHSO team led the fifth session. Nelly Craven chaired the session as our fifth learning exchange, demonstrated through a role-play exercise with a caseworker (Clare) and a clinical adviser (Shelley). They simulated the complexities around commissioning and using clinical advice.

The first learning exchange session was held on the 25th of May 2021, and the fifth session on the 25th of February 2022.

Table 2: Depicts the learning exchange sessions held since the official signing of the twinning agreement between the PHSO and the OHO.

Figure 5: illustrates the learning exchange sessions held since the signing of the twinning agreement between the PHSO and the OHO

No	Topic	Presenters	Date
1.	Overview of OHO case-work methodology	Monnatau Tihloe and Helen Phetoane, (OHO) Phil Whitehead and Jennifer Evans (PHSO)	25 May 2021
2.	Prioritization of cases for investigation	Helen Phetoane: (OHO) Jen Evans: (PHSO)	13 August 2021
	Quality assurance (QA) process	Monnatau Tihloe: (OHO) Jen Evans: (PHSO)	

No	Topic	Presenters	Date
3.	Early resolution and Mediation Communication with complainants	Phil Whitehead (PHSO) George Senyolo: (OHO)	13 October 2021
4.	Case Study: The wisdom of peers The UK and SA Ombud met again	The British High Commissioner in South Africa, Antony Phillipson, welcomed participants. Emphasised that the priorities of the British High Commission (BHC) were to support key issues that affect societies. He expressed his pleasure that the BHC's Better Health Programme, South Africa (BHPSA) supports the formal partnership between the two organisations, strengthening oversight and accountability in the SA health system. The meeting was chaired by the BHC Health Attaché, Tori Bungane, and attended by 12 members of the two offices and BHPSA.	
5.	Clinical advice learning exchange PHSO 20 minutes role play the exercise that looks at how clinical advice is used through the lens of a complex case	Tony Dysart (PHSO) Helen Phetoane (OHO) PHSO clinical advice team	25 February 2022

Table 3: Depicts the Webinars attended by the Complaints Call Centre and Assessment and the Complaints Investigation team

Date	Topic
08/06/2021	AORC-IOI: Systemic Investigations
24/08/2021	UKZN and AORC Webinar: Quality Assurance Mechanisms
21/09/2021	UKZN and AORC Webinar: Strengthening the mandate of the Ombud
02/11/2021	UKZN and AORC Webinar: Conflict Resolution and Management Training
14/12/2021	AOMA Webinar: Effective Leadership skills
25/01/2022	AOMA and the IOI: The value of being a member
08/03/2022	AOMA: Complaint Handling

4. The Office of the Health Ombud key highlights and achievements

Eastern Cape Department of Health Investigation

The Health Ombud visited Eastern Cape from the 07th to the 10th of November 2021 as a follow up to complaints that the services in the province were below expected standards. Equally, it was observed that the relationship between the provincial health services and the newly emerging medical school was not optimal. This visit emanated following investigations by the Public Protector and OHSC Compliance Inspectorate and both investigation teams made similar findings and recommendations. The OHSC Compliance Inspectorate were requested by the OHO to visit after six months following their first investigation to assess whether any progress was made, regarding their findings and recommendations and only to find that very little if any progress has been made.

During his visit the Health Ombud interviewed the following people:

- Labour formations;
- Members of the Eastern Cape Provincial Department of Health;
- Members of the three hospitals namely: Livingstone Hospital, Dora Nginza Hospital and Uitenhage Provincial Hospital; and
- Members of the Faculty of Health Sciences at the Nelson Mandela University.

The major findings were a confirmation by all stakeholders that very little progress was achieved since the Public Protector's and the OHSC Compliance Inspectorate's findings and recommendations; a situation of 'low trust' between all the stakeholders. As a result, there was a failure to deliver adequate and quality health services. The relationship between the province and the medical school was found to be indeed poor and wanting.

The only consequence of this finding is the continued suffering of patients due to poor service delivery. The building of an excellent research culture would also suffer negatively the consequences of this poor relationship.

Further questions were being requested from the Head of the Department for Health and the OHO is awaiting the response.

The emerging clinical school that has all the potential of making a difference in the province and country in terms of improving the quality of services and research does not enjoy the support of these important stakeholders.

5. Meeting with the PHSO

The meeting held between the OHO and the PHSO was about being educated about the possibility of conducting reviews around the offices of the Ombud. In principle, both offices agreed that both Ombuds will benefit from such a review. The date to conduct the review was not concluded. The OHO also made inputs into the annual assessment of PHSO to the House of Commons, Public Administration and Constitutional Affairs Select Committee (PACAC).

The Health Ombud was invited by the Board of the PHSO to articulate the role of OHO and the progress that OHO is making in the mandate of the office. Unanimously, the PHSO Board was very appreciative of the contribution made.

6. Challenges

The biggest challenge is the failure of the Parliamentarians to understand the role of the Health Ombud and how to lodge complaints despite avenues such as emails, online, and telephone through the call centre.

Delays in positively responding to requests for information by some of the health establishments prolong the turnaround time for the complaint resolution. Disgruntled complainants who are aggrieved by the findings and recommendations of the Ombud. Some of these complainants threatened to harm the investigation team through insults or acts of violence.

The unavailability of the key witnesses during the onsite investigation impacts the complaints' resolution time.

7. The Health Ombud's intervention

The Health Ombud wrote letters to encourage the heads of department (HoDs) of the non-responsive health establishment to cooperate and supply the Ombud with information necessary to discharge his responsibilities, as the case may be, in terms of the Act.

The Ombud and the Complaints Management team conduct provincial outreach visits to the Health MECs and HoDs to raise awareness of the functions of the Office of the Health Ombud. The policy on handling unreasonable complainants was developed to mitigate the challenges encountered by the unreasonable complainants.

8. Achievements

- Successful registration of the Office of the Health Ombud to the African Ombudsman and Mediators Association (AOMA).
- Official Launch of the twinning agreement between the Office of the Health Ombud and the United Kingdom Parliamentary and Health Service Ombudsman (PHSO).
- The Parliamentary Portfolio Committee on Health managed to encourage a meeting between the Minister of Health, Dr Joe Phaahla and the Health Ombud, Prof Malegapuru Makgoba, to address long outstanding matter relating to the legal framework, (spelling out the proper mandate), the budget and staffing of an independent office of the Health Ombud. The meeting took place and was productive.
- Draft OHO Bill was reviewed in collaboration with the National Department of Health (NDoH). The process is finally on track and progressing well.
- The Minister of Health, Dr Joe Phaahla has initiated a process through Dr Nicholas Crisp, to complete this process.



9. The Health Ombud plans for the 2022/2023 year include the following:

- Facilitate legislative reform of the Office of the Health Ombud as an autonomous entity;
- Expedite the recruitment and selection of the critical posts in the funded and approved Health Ombud Staff Structure;
- Engagements with the Health MECs and the Head of Departments in various provinces to lobby for cooperation in response to the requests for information from the OHO; and
- Replicate a lesson learned from the UK PHSO by facilitating the combination of the Complaint Centre and Assessment and Complaints Investigation Unit to maximise capacity and ensure expeditious management and resolution of complaints.

10. Conclusion

Following a meeting with the Minister of Health and his team, I am optimistic that the Office of the Health Ombud will be set on the right footing in terms of its legal framework, mandate, budget and staffing. Hopefully, the office will attain its independence soon.

The Complaints Assessment will merge with the Investigation Unit to create a new seamless process of assessment and investigation. This will provide a complement of staffing to address the investigation shortcomings.

The office has completed another successful year in which complaints resolutions improved.



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RP249/2022

ISBN: 978-0-621-50563-4