

INVESTIGATION REPORT

Prepared by: **Adv William Mokhare SC**

Briefed by **TGR Attorneys**

in respect of:

The Organisation Undoing Tax Abuse report on recorded conversations between the NSFAS Chairperson and 'individuals linked to Coinvest Africa (Pty) Ltd,' a service provider contracted by National Student Financial Aid Scheme for the direct payment of allowances to NSFAS beneficiaries.

TABLE OF CONTENTS

1.	Abbreviations	3 – 4
2.	Scope and limitations	5 – 7
3.	Documentary and other material	7 – 8
4.	Mythology	8
5.	Introduction	8 – 12
6.	Terms of Reference	12 – 13
7.	Media Report	13
8.	The interview with NSFAS Spokesperson	13
9.	The OUTA report and analyses of the report	13 – 30
10.	The second meeting	31 – 52
11.	Terms of Reference for Werksmans	52
12.	Werksmans report	52 – 56
13.	Interviews	56
	1. Hendrick Rudolf Heyneke	56 – 65
	2. Sandile July	65 – 67
	3. Ernest Khosa	67 – 74
	4. Jullie Beya	74 – 75
	5. Bamanye Matiwane	76
	6. Maxwell Fuzani	76
	7. Ray Passmore	77
	8. Ishmail Ally	77 – 78
	9. Joyce Moloi-Moropa	78 – 79
	10. Tshegofatso Ntumba	79 – 81
15.	Whether the chairperson acted outside the NSFAS Board resolution	81 – 83
16.	Chairperson's failure to implement the resolutions of the Werksmans report	83 – 89
17.	Legal prescripts	89 – 92
18.	Analyses and evaluation of evidence	92 – 100
19.	Findings	100 – 105
20.	Recommendations	105

1. Abbreviations:

- 1.1 Act means the National Student Financial Aid Scheme Act 56 of 1999;
- 1.2 Coinvest means Coinvest Africa (Pty) Ltd (registration number: 2019/374128/07);
- 1.3 Constitution means the Constitution of the Republic of South Africa, 1996;
- 1.4 Ezaga Holdings means Ezaga Holdings (Pty) Ltd (registration number: 2017/149149/07);
- 1.5 NSFAS means the National Student Financial Aid Scheme as established in section 3 of the National Student Financial Aid Scheme Act No. 56 of 1999;
- 1.6 Norraco Corporations means Norraco Corporations (registration number 2018/642318/07);
- 1.7 OUTA means of the Organisation Undoing Tax Abuse;
- 1.8 PFMA means the Public Finance Management Act 1 of 1999;
- 1.9 Bid number SCMN006/2020 means the first request for proposals that was advertised on 24 July 2020, and subsequently cancelled;
- 1.10 Bid number SCMN014/2020 means the request for proposals that was advertised on 20 November 2020, and subsequently cancelled;
- 1.11 Bid number SCMN022/2021 means the third request for proposals that was advertised on 25 January 2022;
- 1.12 2021 SCM policy means version 3 of the National Student Financial Aid Scheme Supply Chain Management Policy effective from 1 February 2021 that applied to Bid number SCMN014/2020;

- 1.13 SSETA means Services Sector Education and Training Authority;
- 1.14 Star Sign and Print means a company (registration number K2015/262301/07) appointed to provide services to SSETA;
- 1.15 Tenet Technology means Tenet Technology (Pty) Ltd (registration number: 2013/158012/07).

Scope and limitations

2. I conducted this investigation duly briefed by TGR Attorneys. I conducted the interviews with TGR Attorneys, and all the interviews were recorded and transcribed. The scope of this investigation is the two audio recordings of the two meetings attended by the Chairperson of the Board of National Student Financial Aid Scheme (“NSFAS”), Mr Ernest Khosa (“Khosa”) with two individuals; namely, Thula Ntumba (“Ntumba”) and Joshua Maluleke (“Maluleke”). These meetings were recorded secretly by one of the two individuals without Khosa’s knowledge. The audio recordings were given to Organisation Undoing Tax Abuse (‘OUTA’) by a whistleblower during October 2023.
3. OUTA representatives listened to the audio recordings and prepared a report with adverse findings against Khosa; the Board of Directors of NSFAS (“the Board”) and the Minister of Higher Education, Science and Innovation (“the Minister”), and made recommendations inter alia that the Minister, Khosa and the Board should resign with immediate effect.
4. The transcript of the audio recordings; the OUTA report emanating from the audio recordings; interviews with implicated, interested and affected parties; review of documentary evidence such as legislation, policies; charter and code of conduct for Board members are but some of the material we considered in defining our scope and executing our mandate. We also listened to the recordings in order to establish the accuracy of the quoted excerpts in the

OUTA report. We are satisfied that OUTA has accurately quoted the relevant portions of the conversations between Khosa and the two other individuals.

5. Our limitation was that our investigation does not extend to powers given to law enforcement agencies by statutes such as the SAPS in terms whereof a power of subpoena of documents in terms of the Criminal Procedure Act 51 of 1977 is available nor does the Act that establishes NSFAS empower us to subpoena documents or compel implicated, interested and affected persons to appear before us.
6. We were entirely reliant on the cooperation of those we invited for interviews, and those who declined or avoided meeting us, could not be pursued through other legal mechanisms, as there was simply none to enforce. We exercised no power to compel them to appear before us as we had none. But it will be remiss of us not to mention that we received overwhelming cooperation from implicated, interested and affected persons, who upon invitation voluntarily attended interviews. We express our gratitude to them.
7. Lastly, our limitation lay on the absence of power to subpoena bank statements and cell phone records. However, OUTA has disclosed during the interview that a criminal complaint was laid with the South African Police Service ("SAPS") which is currently being investigated. Khosa also told us that he also laid a criminal complaint with the police for the threats to his life. The law enforcement agencies are clothed with extraordinary powers by statute to do that which we are legally constraint to do due to absence of empowering legislation.

8. But these legislative impediments did not impair us from investigating the matter and in some instances, ascertaining the truth. The findings we reached and the recommendations we propose in this report are informed by the evidence we obtained during this investigation. The findings may alter if new information that displaces the evidence at hand surfaces.

Documents and Legislations considered

9. We *inter alia* considered the following relevant material:

9.1 recordings

9.1.1 the audio recordings of the two meetings that were held between Khosa; Ntumba and Maluleke;

9.1.2 documents:

9.1.2.1 the transcript of the two audio recordings of the meetings held between Khosa; Ntumba and Maluleke;

9.1.2.2 the Board charter;

9.1.2.3 the code of conduct

9.1.2.4 supply chain management policy;

9.1.2.5 Werksmans report;

9.1.2.6 OUTA report;

9.1.2.7 Board resolutions and other related documents.

9.2 legislation

9.2.1 the Constitution of the Republic of South Africa

9.2.2 National Student Financial Aid Scheme Act 56 of 1999 (NSFAS Act)

9.2.3 Public Finance Management Act 1 of 1999.

Methodology

10. We conducted the investigation with reference to the terms of reference by listening to the audio recordings, the transcribed record on the audio recordings, the OUTA report, perused documents at our disposal and considered the legislative prescripts and other legal prescripts applicable, interviewed relevant and implicated persons, sent questions to those who declined to attend interviews or those not available to attend interviews, analysed the evidence and made findings and recommendations.

Introduction

11. Audio recordings which involved Khosa, chairperson of NASFAS surfaced in the media during December 2023. But these audio recordings had been in possession of OUTA already since October 2023. OUTA received them from a whistleblower but declined to disclose the identity of the whistleblower. What

was reported in the media then was that NASFAS chairperson, Khosa, secretly met with service providers of NSFAS to discuss confidential matters of the Board.

12. Prior to the publication of the audio recordings, the Board had on 14 August 2023 adopted a resolution in which an independent investigation was initiated against Mr Andile Nongogo, the Chief Executive Officer (“CEO”) of NSFAS, pertaining to the alleged irregular award of the direct payment system tender to the four service providers in 2022, and the role of the CEO in the irregular award of the said tender. In this resolution, the Board also mandated the chairperson to select a reputable law firm that would conduct the investigation and prepare the terms of reference (“ToR”) for the investigation. The direct payment system was intended to ensure that direct payment of student allowances was made by the service providers to the students themselves. Prior to this, tertiary institutions were responsible for disbursements of students’ allowances.
13. Immediately after the Board meeting of 14 August 2023, Khosa spoke to Mr Sandile July, a Director at Werksmans, and informed him that his law firm has been selected for appointment to conduct an investigation. He told Mr July the nature of the investigation and whether Werksmans would have capacity to conduct such investigation. Mr July accepted the instructions, and Khosa informed Mr July that the written instructions would follow in due course.
14. Khosa had also informed Mr July that the Board had resolved to place the CEO on special leave with immediate effect and requested Mr July to assist him with the drafting of the letter placing the CEO on special leave, which Mr July did,

and emailed to Khosa in the morning of 15 August 2023. Khosa and Mr July communicated by WhatsApp in the morning of 15 August 2023. Subsequently, and in the evening of the same day, 15 August 2023, Khosa met with Ntumba and Maluleke at a restaurant at the O R Tambo International Airport in Johannesburg.

15. They had a meeting where they discussed inter alia the appointment of Werksmans. It is this meeting which was recorded by Ntumba without the knowledge of Khosa. It is unknown if Maluleke was also aware. Maluleke evaded the interview and failed to honour his promise to revert to us. Follow up telephone calls remained unanswered. Ntumba was unreachable, nowhere to be found on all the phone numbers we obtained as his.

16. A formal instruction letter was addressed to Mr July by Khosa in his capacity as Chairperson of the NASFAS Board on 18 August 2023. Subsequently, and on a date unknown to Khosa, he met with Ntumba and Maluleke for the second time at a restaurant. This time, at least according to Khosa, not at the airport. This second meeting was also recorded by Ntumba without Khosa's knowledge. The recording lasted for approximately 2 and a half hours. The first part of the recording, which lasted approximately an hour and a half is Ntumba and Maluleke talking to each other before Khosa's arrival. Khosa arrived an hour and a half later and joined them in the conversation. The conversation with Khosa lasted for approximately an hour, until when Ntumba left, and the recording faded and disappeared. Again, it is unknown if Maluleke was also unaware that the conversation was recorded by Ntumba.

17. What we established as a fact during the investigation is that Werksmans was not appointed at Ntumba's instance or influence. Ntumba played no role in the appointment of Werksmans and knew no partner or director whom he could unduly influence to doctor the report and skew the outcome. Werksmans, together with senior counsel, Tembeka Ngcukaitobi conducted the investigation independently and prepared a report which was submitted to the Board during October 2023. On 15 October 2023, the Board accepted the findings and resolved to implement the recommendations of the Werksmans report in full. The chairperson and the Board addressed the media on 18 October 2023 in which the Board's resolution to implement the recommendations of the Werksmans report was communicated.
18. It was during October 2023 when OUTA received the audio recordings of the two meetings but did not publish them. The recordings only surfaced in the media in December 2023. OUTA investigated the authenticity of the recordings and the substance of the content by listening to the audio recordings. Mr Hendrik Rudolph Heyneke ("Heyneke"), the Investigations Manager at OUTA was tasked with the investigation. He listened to the audio recordings and prepared a report, which was signed off by his supervisor, Adv Fick on 4 January 2024. The report made damning findings against Khosa, the Board and the Minister. It recommended that they should resign with immediate effect.
19. The allegations in the OUTA report prompted the Board to institute an investigation on the veracity of the allegations contained in the OUTA report. It resolved that independent investigation by an external law firm be conducted, and a senior counsel of high standing be appointed to conduct the investigation.

We were appointed pursuant to a Board resolution from 26 February 2023 for 30 days within which we should investigate and submit a report to the Board.

The terms of reference were clearly specified.

The terms of reference

20. The Board appointed us to investigate allegations in the OUTA report with reference to the audio recordings of the two meetings, the transcript of the recordings and the OUTA report. To consider other evidential material, legal instruments applicable to NSFAS such as the Constitution, the NSFAS Act, the Board charter, the code of conduct, PFMA, other related prescripts and report our findings and recommendations to the Board on the following:

20.1 the veracity of the allegations in the OUTA report about the chairperson and the Board;

20.2 verify the occurrence of meetings between Khosa and service providers during the process of the investigations that had been conducted by Werksmans in relation to the irregular appointment of the service providers and the role of the chairperson in the irregular appointment of those service providers;

20.3 to authenticate the identities of individuals alleged to be in the recordings and verify the authenticity and purpose of the contents of the recordings;

20.4 confirm whether there were exchanges of money between the chairperson and service providers;

20.5 whether the chairperson acted outside the NSFAS Board resolutions regarding the investigation against the former CEO and the irregularities in the procurement of the direct payment system;

20.6 examine whether the chairperson has contributed to any failure to implement the resolutions of the Werksmans report and subsequent

Board resolutions particularly those related to the recommendations of the Werksmans report;

20.7 to investigate whether the conduct of the chairperson is in breach of his duties as a non-executive director and Board chairperson;

20.8 and investigate and report on any other related matters which may arise out of the investigation and consideration of the report and interactions with the affected parties.

Media reports

21. The two audio recordings of the alleged meetings between the Chairperson of the Board and the two individuals have surfaced in the media during December 2023.

The TV interview with NSFAS Spokesperson

22. The authenticity of the two audio recordings was first confirmed by Mr Ismael Mnisi, the spokesperson of NSFAS in a television interview in Newzroom. He confirmed that Khosa met with some individuals and had a conversation with them which was recorded. The two individuals were not identified by Mnisi during the interview.

The OUTA report and analyses of the report

23. OUTA received the audio recordings from a whistleblower. Heyneke was appointed to conduct the investigation based on the recordings. Heyneke

listened to the recordings and prepared a report which was released by OUTA into its website on 4 January 2024.

24. In its 51-page report, OUTA made damning findings against the Chairperson, the Minister and the Board. It made the following findings in paragraphs 187 to 211 which we reproduce below:

- 24.1 *there were two meetings between Mr Ernest Khosa, the Chairperson of the NSFAS, and Mr Thula Ntumba, who is closely involved with Coinvest, as well as a third unidentified person. These meetings were recorded. The first meeting took place a day after the NSFAS Board resolved to suspend Mr Nongogo. The second meeting took place a week after Werksmans Attorneys was appointed to investigate the matter;*
- 24.2 *the discussions that took place, the specific topics that were discussed and the names used to address people leave no doubt regarding the authenticity of the recordings;*
- 24.3 *Mr Khosa informed Mr Ntumba and Mr B that the Board decided to grant Mr Nongogo leave of absence and that there must be an investigation into the allegations regarding Mr Nongogo;*
- 24.4 *Mr Khosa said to Mr Ntumba that the Board must be seen to take action and that NSFAS would go to Parliament with their action plan. The NSFAS Board did indeed report to the portfolio committee in Parliament and presented their plan of action;*
- 24.5 *the Board members mandated Mr Khosa to draft the terms of reference for the investigation. The NSFAS Board members neglected their fiduciary duties and oversight obligation with a resolution that gave the Chairperson the sole right to take control of an investigation;*
- 24.6 *Mr Khosa asked Mr Ntumba to advise him on which legal firm the Board had to appoint to conduct the investigation. Mr Khosa said he was looking for a law firm that he could control;*

- 24.7 *Mr Ntumba suggested Werksmans and indicated that he knew a partner at Werksmans. The Board did indeed appoint Werksmans to do the investigation as per the suggestion by Mr Ntumba;*
- 24.8 *Minister Blade Nzimande was aware of the meetings between the Chairperson and service providers, and he was scared that their phones could be traced to show that the meetings took place;*
- 24.9 *Mr Khosa was aware of the letters to students accommodation providers, and he admits editing the letters;*
- 24.10 *there were multiple meetings between Mr Khosa and the service providers;*
- 24.11 *Mr Ntumba and Mr C alleged that the Minister and the Chairperson received R6 million from the service provider;*
- 24.12 *Mr Ntumba rubbished the OUTA investigation report and said that they (Coinvest) have done nothing wrong;*
- 24.13 *Mr Ntumba and Mr C discussed the possibility of asking Mr Khosa to extend an investigation to 3 of 4 months and not to terminate the contracts of service providers before December 2023 although Werksmans recommended that the contracts with service providers had to be terminated, none of the service providers that were appointed to disburse students allowances had received a notice from the Board that their contracts would be cancelled. Mr Khosa and the NSFAS Board apparently heeded the call of Mr Ntumba and Mr C not to cancel the contracts of service providers before December 2023;*
- 24.14 *Mr C said that Mr Khosa told him that they must give something to Minister to keep the Minister happy;*
- 24.15 *Mr Ntumba sponsored the SACP's 2022 conference with the amount of R1 million;*
- 24.16 *Mr Ntumba said that Five Star Communications and/or Star Sign and Print printed T-shirts and bags for SACP conference for free. This was the company managed by Mr Ngwenya Baloyi who was also contracted by SSETA;*
- 24.17 *Mr Ntumba's wife is a Director of Star Sign and Print as well as Coinvest;*

- 24.18 *Nedbank is a sponsorship bank of Coinvest;*
- 24.19 *Mr C said that they have paid Mr Khosa R1.5 million from funds that they should have used for expenses;*
- 24.20 *there was a meeting between Mr Khosa and service providers which was attended by another NSFAS Board member, Mr Bamanye Matiwane;*
- 24.21 *there was a meeting between Mr Mtumba, the Minister and the Chairperson that was also attended by Mr Nqaba Nqandela, a special adviser to Minister Nzimande;*
- 24.22 *the recording device for the second meeting was on Mr Thula Ntumba. When he left the meeting early and on its own, the recording stopped;*
- 24.23 *the meetings between Mr Khosa in his capacity as the Chairperson of the NSFAS Board and service providers of NSFAS is unethical and illegal;*
- 24.24 *meetings between the Minister of Higher Education and service providers of an institution that resorts under the Department of Higher Education is unethical and illegal;*
- 24.25 *it is unethical and illegal to offer, give or pay a public official and/or a Minister money or to provide them with something of value to influence their actions and decisions.*
25. Some of the paragraphs reproduced as findings from the OUTA report are not necessarily findings but mere recordal of statements. The only question is whether the recordal of the statements is the accurate reflection of the audio recordings that Mr Heyneke listened to, or whether there are inferences drawn from listening to recordings or just a mere statement of fact. This will necessitate that the OUTA report be considered in the context of the actual audio recordings themselves and the analysis of the recordings by Heyneke in the report.

26. It is important to identify the findings of the OUTA report as reproduced and captured in paragraph 187 of the report to 211 of the report. The findings can be crystallised as follows:

- 26.1 *that the recordings are authentic;*
- 26.2 *that Khosa discussed matters of the Board with Ntumba and the other unidentified person in these meetings;*
- 26.3 *the Board abdicated its duty when mandating Khosa to draft the terms of reference of the investigation against the CEO and gave him a sole right to take control of the investigation;*
- 26.4 *that it was Ntumba who influenced Khosa, and by necessary implication the Board, to appoint Werksmans to investigate the direct payment tender to the four service providers and the role of the CEO in the award of the tender;*
- 26.5 *the Minister was aware of the meetings between Khosa and the service providers, and the Minister was scared that their phones could be traced to show that the meetings took place;*
- 26.6 *that Mr Khosa met with service providers in multiple of times;*
- 26.7 *that Ntumba and Mr C alleged that the Minister and the Chairperson received R6 million from a service provider;*
- 26.8 *that Khosa and the Board heeded Ntumba and Maluleke's requests that the contracts of service providers should not be terminated until end of December 2023;*
- 26.9 *Mr Ntumba sponsored the SACP's 2022 conference with the amount of R1 million;*
- 26.10 *Mr Ntumba said that Five Star Communications and/or Star Sign and Print printed T-shirts and bags for the SACP conference for free;*
- 26.11 *Mr C said that they have paid Mr Khosa R1.5 million from funds that they should have used for expenses;*
- 26.12 *that there was a meeting between Mr Khosa and service providers which was attended by another NSFAS Board member Mr Bamanye Matiwane;*

26.13 there was a meeting between Mr Ntumba, the Minister and the Chairperson that was also attended by Mr Nqaba Nqandela, a special adviser to Minister Nzimande;

26.14 the meetings between Mr Khosa as Chairperson of NSFAS Board and service providers is unethical and illegal;

26.15 meetings between the Minister of Higher Education and service providers of an institution that resort under the Department of Higher Education is unethical and illegal;

26.16 it is unethical and illegal to offer, give or pay a public official and or a Minister money or to provide them with something of value to influence their actions and decisions.

27. Based on these findings, OUTA made the following recommendations and actions to be taken in its report. They appear in paragraphs 212 and 226 as follows:

27.1 Minister Blade Nzimande must resign with immediate effect;

27.2 in the event that the Minister does not resign, the President must remove the Minister from his position as a Cabinet Minister with immediate effect;

27.3 OUTA to submit a letter together with this report to the President with the request to remove Minister Nzimande from his cabinet;

27.4 the Chairperson of NSFAS, Mr Ernest Khosa, must resign with immediate effect;

27.5 the members of the Board of NSFAS must resign with immediate effect;

- 27.6 OUTA to hand this report together with the recordings to the SIU for investigation purposes;
- 27.7 OUTA to submit a criminal complaint at SAPS against Minister Blade Nzimande, Mr Ernest Khosa, Mr Thula Ntumba, the directors of Coinvest as well as Coinvest Africa itself for corruption and bribery in terms of Prevention and Combating of Corrupt Activities Act (12 of 2004);
- 27.8 OUTA to submit this report to the Public Protector and to request an investigation into the conduct of the Minister of Higher Education;
- 27.9 OUTA to submit this report together with other investigation reports into irregularities at several institutions that resort under the Department of Higher Education, to the office of the Chief Procurement Officer with the request to conduct an investigation into several service providers at public institutions for the purpose of restriction of the service providers and to upload them onto National Treasury's restricted supplier's database;
- 27.10 OUTA to hand this report to Werksmans Attorneys for their perusal and comments (if any);

- 27.11 OUTA to submit this report to Nedbank for their perusal, comments (if any) and further investigations into the conduct of their client Coinvest, for risk mitigation purposes;
- 27.12 OUTA to submit this report to the South African Revenue Services ("SARS") for their perusal, comments (if any) and further investigation into the Tax affairs of the individuals and companies implicated in this report;
- 27.13 OUTA to submit this report to the Auditor General of South Africa ("AGSA") for perusal and comments (if any);
- 27.14 OUTA to submit this report to the Universities of South Africa (USAF), the umbrella body for the 26 public universities in South Africa, for perusal and comments (if any);
- 27.15 OUTA to hand this report to the Ethics Institute for perusal and comments (if any).
28. According to the OUTA report, OUTA received the two recordings from the whistleblower in October 2023. OUTA contends in paragraph 13 of its report that the two individuals that met with Khosa can be linked to one of the four service providers appointed by NSFAS for the direct payment of student allowances. The four service providers that were appointed to provide direct payment of student allowances are the following:

- 28.1 Coinvest Africa (Pty) Ltd;
 - 28.2 Tenet Technology (Pty) Ltd;
 - 28.3 Ezaga Holdings (Pty) Ltd; and
 - 28.4 Norraco Corporation (Pty) Ltd.
29. According to OUTA the first meeting between Khosa, Ntumba and Maluleke took approximately 20 minutes at a restaurant close to the airport. According to OUTA, this meeting was held after NSFAS Board resolution to place the CEO on special leave. According to the Board's resolution, the Board adopted a resolution to place the CEO on special leave in a meeting of 14 August 2023. The second meeting according to OUTA, also took place in a restaurant a week after Werksmans was appointed to investigate the conduct of the CEO. OUTA also does not know the exact date of when this meeting took place. The recording of the second meeting lasted for about two hours, of which according to OUTA can be divided into two parts.
30. The first part contains conversation between two unidentified individuals who met at the restaurant and had a conversation for about an hour and half among themselves. Khosa is not present during that time. These two individuals are later joined by Khosa at the restaurant and the conversation continued among the three of them for about an hour. According to OUTA, when listening to the recordings, the discussions revolve around the OUTA investigations, the Chairperson of the Board, the CEO of NSFAS, and the Minister. OUTA analysed the conversation between Khosa and the two individuals and

according to OUTA these conversations *“illustrate how all the individuals and companies referred to in the conversations are linked to a kind of network which operated in the higher education and political space to gain support from public officials and politicians”*.

31. In coming to this conclusion, OUTA quoted certain excerpts from the recordings, considered the political history of Khosa, and the Minister and concluded that Khosa and the Minister were friends and belonged to the same party, the South African Communist Party (“SACP”).

32. OUTA analysed the two audio recordings and quoted portions of the recording which in its view support the findings and conclusions it reached. It dealt with the first recordings first and thereafter the second recording. With regard to the first recording, it noted that NSFAS released media statement on 16 August 2023 in which it announced that *“in the interest of the image of NSFAS, the Board has resolved to investigate the allegations with the particular focus on the direct payment project. During the course of the investigation, the Chief Executive Officer will be on leave of absence”*. It further quoted in paragraph 30 of the report the media release which ended with the quote from the Chairperson as follows: *“the Board commits itself to transformation and clean governance at NSFAS and will ensure that any activities that defeat a purpose of serving students from poor and working-class backgrounds are addressed decisively”*.

33. OUTA further records in paragraph 31 of the report that Khosa met with the two individuals appearing in the recordings before the media statement referred to above was released. According to OUTA it suggests that the meeting between Khosa and the two individuals occurred after the meeting of the Board of 14 August 2023 before the media statement of 16 August 2023.

34. From paragraph 32 of the report Mr Heyneke quotes certain portions of the recordings which in his view support the conclusion reached in the report. At the top of page 8 of the report OUTA quoted Mr Khosa as having said the following:

“Mr Khosa: yoh yoh yoh, yoh yoh yoh... but what they have done, what we are unable to do, is to sponsor certain people to do certain things. Because right now it is the journalist who is calling all of us about yesterday’s Board decision.”

This quote confirms what OUTA said earlier that Khosa met the two individuals before the media statement issued by NSFAS on 16 August 2023. In fact, what is clear from the quote is that Khosa met with the two individuals on the 15th of August 2023. This is with reference to when Khosa refers to the yesterday’s Board decision.

35. The other quote of what Khosa said is reproduced in paragraph 33 of the OUTA report. He is quoted as having said:

“Mr Khosa: Thula we are in trouble and the only way we can manage this trouble is going to Parliament.”

So, there are things at the services SETA. I didn't know the details, but you can be sure I now have the detail because these people are sending things everywhere. There is nothing illegal. There is nothing illegal that the CEO has done."

36. He is further quoted in paragraph 35 as follows:

"Mr Khosa: but that is not the problem 'referring to the OUTA report'. The point is that they wanted these things to remove the Minister and they wanted this thing to remove the Board by tomorrow.

Mr A: because of that other thing? (It is uncertain to what is the thing Mr A referring to)

Mr Khosa: yes. So, in a Court of law he can win, I can win. In a court of politics, you cannot win because they just want to mess you up."

37. The report turns to conversation between Khosa and the two individuals in which they spoke about Khosa having to speak to someone and he said that he didn't trust him. OUTA has analysed that to be a reference to Mr Nongogo, CEO of NSFAS. This seems to be correct that reference to 'him' here is to the CEO.
38. Khosa also confirmed that the instruction for the CEO to take leave came from the resolution of the Board. The report turns to dealing with political discussions in which Khosa is quoted to have said that the target was the Minister and that OUTA was a hired gun. In paragraph 40 of the report, OUTA has quoted Khosa having said: *"Khosa: we will never kill anybody around this table"*.
39. OUTA has interpreted this to mean that Khosa was saying that the contracts of the service providers would not be terminated. Such interpretation may be

sound if the two individuals that Khosa met with were shareholders or directors of any of the service providers or linked to the entities that had been appointed as service providers. Or, if there is evidence to substantiate any contention that the two individuals were acting as agents of any of the entities appointed as service providers. We also have to bear in mind that Khosa said to us during the interview that he was playing along, and whatever he said was a façade and did not mean it. He said he was at the time no longer trusting the two individuals' modus operandi. We also have to take into account what the three service providers told us during the interview. The three service providers interviewed denied that Ntumba and Maluleke were agents acting as representatives of the service providers or linked to the entities appointed as service providers. Tshegofatso Ntumba ("Ms Ntumba"), who is married to Ntumba also denied that Ntumba was Coinvest's agent or representative.

40. Later in paragraph 41 of the report, Khosa is quoted as having said the following:

"Mr Khosa: the tactical decision is that... ok, let's presume that we hadn't done what we are doing, 'referring to Nongogo's leave of absence and the decision to do an investigation' the Board will be out tomorrow. I don't know what we going to be replaced with.

When we said that we want to investigate the terms of reference were done by me.

One of the resolutions of the Board is to give all power to me. They said so in the resolution. Let's say we investigate Andile, I know all the things that we did together in the corners, and I know why we can get caught.

We have drafted the terms of reference and excluded anything that is the problem.

The only thing that we are not able to exclude in the investigations is to investigate the award to the four companies.”

41. What is said by Khosa as reproduced which is accurate is that at the time when he met with the two individuals the Board had taken a resolution on 14 August 2023 to place the CEO on special leave, to institute an investigation, and mandated the Chairperson to appoint an independent law firm which would conduct an independent investigation and for the Chairperson to draft the terms of reference for the investigation.
42. What is not clear is what Khosa meant when he said that they have drafted the terms of reference and excluded anything that was a problem. But the terms of reference were expansive, and they are referred to in the Werksmans report. Werksmans was required to investigate whether the direct payment tender award to the four fintech service providers was not irregular, and the role of the CEO in the tender award. The terms of reference accord with the framework of the resolution of the Board and it could not have been open for Khosa to exclude anything that has been authorised by the Board’s resolution. Khosa did not tell the two individuals what was excluded from the terms of reference. He also did not show them the terms of reference that were prepared by him.
43. What is also not clear from what Khosa said is why he said that *“the only thing that we are not able to exclude in the investigations is to investigate the award of the four companies”*. When one considers the resolution of the Board, it was precisely about investigating the manner in which the four service providers had been awarded the tender and the role that the CEO might have played in the

award of the tender. In short, the investigation was to focus on whether there were irregularities in the award of direct payment system tender to the four service providers. And if so, whether the CEO contributed to the irregular awarding of that tender.

44. What Khosa said to the two individuals about the terms of reference, and the exclusion of problematic terms of reference, and the difficulty of excluding the investigation of the direct payment system tender is consistent with what he told us, that he was playing along with them. As to why he decided to play along with Ntumba and Maluleke, and why he met with them twice despite him saying they were not his friends is entirely unclear.
45. However, OUTA has interpreted these statements to mean that Mr Khosa had the potential and capacity to control not only how the investigation was to be conducted, but also the outcome of the investigation, despite that the investigation was to be conducted by an external law firm. This conclusion could only be plausible if the investigation was internally conducted.
46. In paragraph 44 OUTA quoted the conversation between Khosa, Mr A and Mr B who spoke only once. This was the conversation about the appointment of Werksmans to conduct the investigation. In paragraph 44, OUTA has concluded that this conversation and what Khosa said was very concerning because he has held the terms of reference under his control and what he was looking for was a law firm that he could control. Because of the importance of

this conversation which has been quoted at length under paragraph 44 of the OUTA report, we also reproduce it hereunder:

"Mr Khosa: you get a friend that you can manage. One of the reasons I am going there, he must tell me which one. You must give me the firm.

Mr A: it must be a law firm? We must give you Werksmans.

Mr Khosa: Werksmans? Are you sure?

Mr A: ja, he must call Werksmans. You know, why are we using that name? When the report is out and you have used that name, what are they going to say? When the report is released by that name is clear they won't challenge it. And Werksmans, there are partners we know.

Mr Khosa: so, tell me, who is at Werksmans? Now that you have said Werksmans, I will use them.

Mr A: but remember, it must be a certain partner, not anyone. So, I am saying that you can't just take the name.

Mr B: I think these things can be managed. So, it must be through the people you are working with [Mr B is talking to Mr A here].

Mr Khosa: who is the partner?

Mr A: I will have to check the name. I can come back with a name.

Mr Khosa: white or black?

Mr A: no, he is black. But the name, remember when it goes out it says Werksmans. Werksmans is Werksmans. Because that's what all these people use, remember Transnet was Werksmans, PRASA is Werksmans."

47. OUTA concluded in paragraph 45 of the report as follows based on the conversation:

“The suggestion by Mr A to appoint Werksmans Attorneys to do the investigation became a reality when Werksmans was indeed appointed on 18 August 2023. It is however debatable if the Chairperson and his partners really succeeded to manage the outcome of the investigation done by Werksmans and Advocate Tembeka Ngcukaitobi SC. It is OUTA's opinion that the plans hatched by Mr Khosa and Mr A failed miserably with the findings and recommendations that were made in the Werksmans investigation.”

48. OUTA concluded in its report that there was a plan which was hatched by Khosa and Mr A to appoint Werksmans, and that they would speak to a black partner at Werksmans who would engineer the outcome of the investigation. According to OUTA, the outcome sought was to clear the CEO and maintain the contracts of service providers. OUTA concluded that the plan backfired, instead, Werksmans made damning findings and recommendations in its report.
49. It must be borne in mind that OUTA did not have the benefit of interviewing Mr July from Werksmans. The finding would have been different if Mr July and Mr Khosa were interviewed.
50. Mr Heyneke accepted during his interview that the inference drawn was incorrect. Mr Heyneke apologised to Mr July.
51. Khosa, Ntumba and Maluleke then talked about the signing of the letters. It is not clear which letters they were referring to. Mr Heyneke also did not know but could only speculate.
52. OUTA refers to the City Press article published on 22 October 2023. In this article, Mr Nongogo is alleged to have said that his electronic signature was

used without his permission to issue student accommodation offtake agreement letters to 12 potential service providers. Mr Heyneke suggested this may be the letters Khosa, Ntumba and Maluleke spoke about.

53. Khosa, Ntumba and Maluleke continued with the conversation and Khosa spoke about having known Ntumba for 15 years. He said:

“Mr Khosa: I have a good mind of saying I know you. I know you but I never know that you did business at the SETAs. Is not necessary for me to tell you I know you. I know you. I have known you for 15 years. What is the problem?”.

54. Lastly, and with regard to the first meeting, OUTA quoted Khosa in paragraph 25 of the report as follows:

“Mr Khosa: these guys ... with what I am gathering they have been checking around. They are checking our cellphones. They say they will release these things. That is what is scaring the Minister. He is shit scared”.

55. OUTA inferred from this quotation that the Minister was aware of the meetings and did not want them to be known. This is apparent from paragraph 56 of the OUTA report in which it is stated that:

“the statement by Mr Khosa that the Minister was afraid that they could be monitored, implied that not only was the Minister fully aware of what was taking place, but also that he was aware that the Chairperson of NSFAS was meeting with service providers and discussing NSFAS affairs with them”.

56. Khosa left the meeting and the recording stopped.

The second meeting

57. OUTA also listened to the audio recordings of the second meeting. The audio recording of the second meeting is substantially long because the first part is the meeting between Mr A and Mr B. It has since been established by OUTA that Mr A was Thula Ntumba and Mr B or Mr C was Mr Joshua Maluleke (Maluleke). This was also confirmed by Khosa during his interview.
58. What is not clear is whether Maluleke was aware that Ntumba was recording their conversation. What is also not clear is why Ntumba found it necessary to record the conversation between himself and Maluleke when the target was Khosa. The two sat in the restaurant for over an hour and a half talking among themselves in the absence of Khosa who arrived only after an hour and a half and sat with them for another hour.
59. The recording of the second meeting is approximately 2 ½ hours. What is particularly of interest is what Ntumba and Maluleke discussed among themselves about Khosa. They did not trust him, and they planned to black mail him.
60. OUTA has reproduced the conversation between Ntumba and Maluleke in paragraph 61 of the report as follows:

“Mr C: I think let's manage this man.

Mr A: so, what is he saying? What is his end game? We are having a discussion about when we must do something. There must be an end game.

Mr C: but so, I don't think he has clearly defined the end game. For him is about, and thus my assessment, it's about monetizing. But I think they've got power to, you know Mr Ntumba, if for instance they can start by saying, I was thinking about this, they can say the report yeah, the CEO the investigation must be for 3 months. Why must they rush and make it a month? That's my thinking. In that three months of worktime, it's the end of the year. Because now they are ceding to pressure from these guys. The OUTA and them. Let's finalise this report and they are agreeing in terms of how they are doing things, they should communicate the message of three months ...

Mr A: so, they are now communicating directly with OUTA?

Mr C: no no, they are not, but I am just saying the pressure they are responding to this pressure."

61. OUTA has understood this conversation as confirmation that Ntumba and Maluleke influenced Khosa and the Board about the outcome of the investigation. At that stage, when OUTA prepared its report, it believed that Ntumba and Maluleke were representatives of the service providers.

62. In paragraph 64 of the report Ntumba and Maluleke are quoted as saying:

"Mr C: but me, I am saying, Mr Ntumba, if we can have this report even if for four months, three months, is minimum. There is nothing, but we will manage the noise. Remember now they are happy now that there is investigations. This ones want to rush it, next week or two week.

Mr A: that's why I am saying, I don't know what the end game is.

Mr C: but if we could push for 3 months and plan the end game proper instead of saying we want to take out Coinvest, we want to takeout all of you.

Mr A: remember, Action SA youth league went to court to say they want to set aside this thing. Once we do that, they will set aside everything. I am telling you.

Mr C: no no, I see he wants to take us all out. It's like threatening, so that we can give him many things."

63. Ntumba and Maluleke wanted a three to four months duration of the investigation. What remained for them was how to persuade Khosa to agree to a longer duration of the investigation. They intended to engage him on the subject when he arrived. It seems from their conversation; they had no control over Khosa.
64. But, OUTA had a different understanding. It believed that Ntumba and Maluleke did have influence over Khosa.
65. In paragraph 66 OUTA has quoted Ntumba and Maluleke talking about Khosa's trip to London before July 2023. Ntumba suggested that Khosa met the Chairperson of an entity called Fundi. The Chairperson of Fundi is one Ms Fatima Habib ("Ms Habib"). Fundi submitted its bid but was unsuccessful. Fundi was often disqualified. It is reported in paragraph 66 that Ms Fatima Habib is the spouse of Professor Adam Habib, the former Vice Chancellor of Wits University. The couple currently lives in London. The conversation between Ntumba and Maluleke on this subject is recorded as follows:

"Mr A: you see, in my own analysis, the man himself we will ask him today the man himself, when he was overseas and he said that the Fundi Chair was there, apparently. We got that information he was in London. I think they met, and my suspicion is that there are certain things that they have exchanged and now he is receiving pressure. Remember, when he came back, he said he and the CEO will be out by the end of end of July. I think there are certain things that have happened. I am telling you.

Mr C: eh, remember he said you were given two days... Who is this person? Because if it's not the Minister, who is this person?

Mr A: remember when he came back from that side, he wanted the whole room."

66. OUTA speculated on the meaning of "whole room" in paragraph 67 of the report.

67. Khosa and Maluleke also speculated about what Khosa did in London. Khosa seemed not to have told them about his trip to London, until after his return to South Africa. It seems as if Ntumba and Maluleke knew very little about Khosa's movement and activities.

68. They speculated about Khosa having received something, but they did not expressly mention what Khosa could have received from Ms Habib. They speculated that Khosa received something on behalf of the Minister. Mr Heyneke has said during his interview that Ntumba and Maluleke have said that Khosa received R6 million when he was in London. This is not factually correct. Ntumba and Khosa did not say that in the recordings.

69. OUTA also found that Ntumba and Maluleke conspired against Khosa and hatched a plan to scare him. OUTA reproduced the conversation between Ntumba and Maluleke at paragraph 69 of the report as follows:

"Mr C: Aaah, but Mr Ntumba, you know if he is behaving like this, we can be... We can deal with him as well just a tweet tomorrow, saying, you know, this chair and the Board is also not correct.

Mr A: but they will deal with us because we will be making the Board unstable. But if they are going to say they are taking all of us out. I am telling you I think that's the mandate for me when I am analysing it. You know, there is no issue of non-performance, there is no issue of non-compliance."

70. The conversation reproduced above is consistent with Ntumba and Maluleke's conspiracy against Khosa and their distrust. What they said is also inconsistent with the theory that they could influence the Board and Khosa to stage manage the outcome of the investigation. Their frustration was that they could not get what they wanted from Khosa, and Khosa was not playing ball.
71. They hatched a plot to unleash a smear campaign against Khosa, with the hope that he would play ball. They planned to send false tweets to him on unidentified number(s) with threats in order to unsettle him. But they were careful not to make the Board unstable. As to what they meant by that is unclear. On their own version, they had no control over Khosa. He made no undertaking to retain the contracts of service providers after the investigation, and he made no promise to keep the contracts of service providers extant for three months until the end of the year if the recommendation of the investigation was that the contracts should be cancelled. He played along with them during the first meeting when he created the impression that he was considering Werksmans for appointment when at that stage he had already contacted Werksmans.
72. He created the impression that he did not know the partner to be contacted at Werksmans, when he had already contacted Mr July about the appointment and had instructed him to draft a letter placing the CEO on special leave already. During the second meeting, he created the impression that he had

spoken to Ntumba's men who had already started the work. What he meant was that he had carried out Ntumba's mandate to appoint Werksmans, which was not the case.

73. Ntumba had not provided him with a name of a partner to be engaged. As to how Ntumba believed that his mandate had been carried out when he had provided no name to Khosa is difficult to understand. Surely, Mr Khosa was not singing from the same hymn book with Ntumba and Maluleke. They simply did not trust each other.
74. Ntumba and Maluleke seemed to have believed that if Khosa received threats, he would deliver what they wanted by stage managing the outcome of the investigation and frustrate the termination of the contracts of the service providers or delay the termination if the outcome of the investigation was to the effect that the contracts should be cancelled. As to why they believed that way is not clear.
75. OUTA would not have reached the conclusion it reached about Werksmans' appointment had it managed to interview Mr July. It also would not have done so had it interviewed Khosa and the members of the Board. It would have known that Ntumba played no role in the appointment of Werksmans. Ntumba was simply creating a false impression that he had connections in higher places and that he could make things happen.

76. OUTA also concluded from listening to the recordings that Maluleke was employed by Norracco. Norracco is one of the four appointed service providers. It must be noted that at that stage when OUTA listened to the recordings, it did not know who Mr B or C was, although it was emphatic that Mr B and C was the same person. OUTA only managed to obtain the identity of Mr B and C after it had released the report to the public through publication on its website.

77. It correctly established that it was Joshua Maluleke. This was confirmed by Heyneke during the interview. He confirmed during the interview that Maluleke was not linked to any of the service providers. He listed companies in which Maluleke was either a director or shareholder and confirmed that none of them were service providers of NSFAS. OUTA had based its conclusion about the employment of Maluleke from what it quoted in paragraph 70 of its report. The quote is as follows:

"Mr C: says these people, they are picking you as my cousin. He is lying. Andile wants to justify why we must be out of this thing. He says now is linking him, that he is connected to Norracco. But I am not even a director of Norracco."

78. What Maluleke said as quoted above does not make sense. What seems evident is that Ntumba and Maluleke wanted Nongogo to stay on as CEO, although we could not establish the relationship between Ntumba and Maluleke on the one hand with Nongogo on the other hand, due to the fact that we could not interview Ntumba, Maluleke and Nongogo. The statement that Nongogo wanted them out contradicts Ntumba and Maluleke's intentions to keep Nongogo on the job. What this contradiction confirms is that Ntumba and

Maluleke were simply making unsubstantiated claims. They created the impression that they were speaking on behalf of the service providers when there is no evidence to support that claim. They were name dropping and gave the impression that they have the power to make things happen.

79. In paragraph 75 of the OUTA report the conversation between Ntumba and Maluleke is reproduced as follows:

“Mr A: remember we met him here last time with that boy and that boy, he issued that very bad statement and I called him. But he said no, I was guided by chair who told it must be like this. That’s what he said. I asked him why, what nonsense is this? He said I was guided chair to say no he must use it like this to counter EFF.

Mr C: you know I also want to get to him this way, just to send him a text direct with an unknown number to say we are taking these things of your past to the media. Remember, I am not sending this to the media, just to his number. Can you a phone somewhere, write a proper paragraph because it seems like he forgets where he is from.

Mr A: he was acquitted.

Mr C: no no no. But it doesn’t matter. The politics is playing with the CEO. And is not as if the CEO is guilty.”

80. Ntumba and Maluleke were unhappy with Khosa. But they had no courage to confront him. They believed that dirty tricks may sway his mind and extend the contracts of the service providers until December 2023. What we do not know is what benefit they stood to gain if the contracts of the service providers were not terminated.

81. In paragraph 78 of the report, OUTA has quoted the conversation between Ntumba and Maluleke. It goes as follows:

“Mr C: because the way he is dealing with us, he is becoming an enemy and he is misleading us, taking our monies and everything else. Because this thing is on the internet is still there.

Mr A: so, it means these people are fighting for that R6 million. Remember at some point he was demanding. He said he and the Minister want R6 million.

82. Ntumba and Maluleke spoke in vague terms about payment of money. They were vague about the money they allege they gave to Khosa. It is not clear who gave the money, where and how much. They were vague about the R6 million.

83. OUTA also quoted the conversation between Ntumba and Maluleke in paragraph 87 of the report. This conversation goes as follows:

“Mr C: but I am saying, be that as it may, this process must take three months.

Mr A: they won't. He's got played. I am telling you. You know, you can see when a person has been given something and they put a gun on his head. I am telling you. They won't agree to three months. No, because wherever he has collected, is got a gun on his head. Remember, he said it himself that he is giving up until the 30th of July. Indirectly he told us. Remember, he told us that he said that he is going to be gone. Him and the CEO. So, he had to save himself. That's why this thing... I am telling; he's got a gun on his head.

Mr C: but you can't have an investigation of two weeks on a matter like this. Its predetermined, right?

Mr A: yeah, it's predetermined. The principal, whoever he is reporting to, they are telling him. Because even look at what has happened now. Noise is

gone. No university strike, no student striking. Is controlled. Very controlled, you know.”

84. This conversation confirms that Ntumba and Maluleke had no control over Khosa. They believed he's got played and that he's got a gun on his head. But they have no evidence to substantiate this. Ntumba said that Khosa has given up, and he thought he would be gone by the 30th of July.
85. They believed that the outcome of the investigation had been pre-determined, and that Khosa would not agree to a three to four months period of the investigation because he has been handled somewhere. This simply confirms that they had no control over Khosa.
86. The bottom line is that Ntumba and Maluleke's conversation did not make sense at all. There exists no reasonable ground for it to be taken seriously.
87. OUTA also concluded in paragraph 88 that Ntumba and Maluleke believed that Khosa destroyed the CEO's career. This is contrary to the assertion that Khosa was an ally of the CEO, and his mandate was to protect the CEO.
88. In paragraph 89 of the OUTA report, Ntumba is quoted speculating. Ntumba said that he would remind Khosa when he arrived about the R1 million he gave him. When Khosa arrived, Ntumba did not remind him. Below is what Ntumba said:

“Mr A: I gave him a R1 million for the Communist Party. Just imagine. For the conference. When there was nothing. I donated with the very same company that created T-shirts last year together with the bags.”

89. The importance of this claim is that Ntumba did not put it to Khosa when he arrived. Ntumba also failed to state how the R1 million was given to Khosa, and why it was given to Khosa and not the leadership of the SACP. Ntumba also did not state when he gave the R1 million to Khosa.
90. Although Ntumba and Maluleke knew Khosa well, they seemed not to have known his political affiliation. Ntumba did not explain why it was necessary for him to donate to the SACP. His claim is not substantiated with evidence. It simply remains a vague claim with no evidentiary value.
91. The vagueness and contradictions in Ntumba and Maluleke’s conversation is quite telling. They lack credibility and what they discussed is incoherent and muddled. Ntumba was aware that he was recording the conversation. He would have been clearer in his articulation of the wrongdoing committed because the purpose of the recording could only have been to use it against Khosa at a later stage, or blackmail him for one reason or the other.
92. Ntumba and Maluleke are further quoted in paragraph 91 of the OUTA report as follows:

“Mr A: so, he doesn’t say anything about the Minister?”

Mr C: no, he’s not saying anything.

Mr A: what is his discussion with the Minister?

Mr C: the only thing he says is if you can undertake to take care of Minister, is not a problem. It's a monetizing mentality. Taking care of the Minister means that you must give him things."

93. What they said was that Khosa did not say anything about the Minister, but he said the Minister must be taken care of. They understood that to mean the Minister must be given things. This discussion between Ntumba and Maluleke about the Minister is so vague and meaningless. OUTA interpreted it as evidence that the Minister has received money from service providers. But that is not what Ntumba and Maluleke have said.

94. Ntumba and Maluleke are quoted also in paragraph 94 of the OUTA report. They talked about Ntumba alleging that he attended a meeting with the Minister at the airport. He spoke about the big man. Whether a reference to "Big Man" was to the Minister is unclear.

95. A further quoted conversation went as follows:

"Mr A: you know me, I was called in that meeting at the airport. The big man was there. We spoke. We greeted.

Mr C: seriously? I am sure he was not comfortable.

Mr A: no no no, I met with him first and then he says he wants to tell him he is not going to get anything because is a refund for him now. So, then I greeted, you know, the Minister. We spoke, and then, with Nqaba. Then I left them to talk. Then when they were finished, that's where we met again and say there must a meeting of four.

Mr C: maybe let's do that, even now ...

Mr A: then the meeting of four was cancelled.

Mr C: I remember.

Mr A: many times the meeting of four ...

Mr C: remember, we came there rushing, once we delivered that thing, I was there. You know, that meeting is to coerce you into giving out something."

96. This conversation is incoherent and muddled. Ntumba spoke about the meeting of the big four without mentioning their names. This could only have been deliberate. The entire conversation is confusing and makes no sense. None of these allegations about the meeting and the money were discussed or put to Khosa so that his admission could be recorded when he arrived.
97. OUTA concluded on the strength of this conversation that the Minister met with service providers and that the Minister received money from the service providers. But, Heyneke said during the interview that according to Ntumba and Maluleke, the money was received from Ms Habib in London. This version contradicted the finding in the OUTA report which concluded that the money was received from the service providers.
98. OUTA also quoted Ntumba and Maluleke in paragraph 98 of the report. What was alleged was that Khosa met with service providers separately. The names of the service providers were not mentioned. This conversation goes as follows:

"Mr A: the boys told me that he said that he is going to meet those players one by one.

Mr C: seriously?

Mr A: that's what they said, yeah. To understand who they report to. I am sure he has met them, I don't know.

Mr C: but why is he clumsy to discuss such strategy things with the boys?

Mr A: and I feel these boys are the ones that are also talking a lot out there. That's my feeling.

Mr C: you know what. In that meeting at the airport, that man spoke of a war chest of R6 million in front of Matiwane and that boy, I realise, and I thought otherwise about this thing. And now there's talk of six bar.

Mr A: yeah, that do not even carry 10%.

Mr C: and from there he is just going to take 10% and then realise I am not making money. You can trust me men. There is no other source of income.

Mr C: those guys, I don't think that they are paying him good money.

Mr A: I think they gave out 6, I am telling you.

Mr C: yes, they gave him, but is gone. Now they must be monthly."

99. What is astonishing is that Ntumba and Maluleke talked in vague terms about people, the money, and were not specific. Ntumba and Maluleke were incoherent and contradictory about the R6 million.

Khosa joined the meeting

100. Khosa joined Ntumba and Maluleke at paragraph 107 of the OUTA report where Khosa is quoted greeting and Ntumba responding.
101. In paragraph 110 of the OUTA report Khosa is quoted with Ntumba saying:

“Mr Khosa: let me start with a briefing on where we are. You said we must appoint Werksmans. You recommend Werksmans you remember.

Mr A: yes. The reports, when they come from small firms they get rubbished.

Mr Khosa: yeah. So, I did get to know who are your guys as well. Now I know. They updated me. As soon they were appointed SIU said they must stop. What is your interpretation on that?”

102. In paragraph 111 of the OUTA report, it interpreted a reference to “our guys” to mean a reference to Werksmans. But this is not factually correct because Khosa did not say “our guys”. He said, “your guys”. He was referring to Ntumba’s guys. But Ntumba did not talk about his guys at Werksmans in the first meeting rather he was specific that he knew a partner at Werksmans.

103. In paragraph 114 of the OUTA report, Khosa is again quoted with Ntumba, and that conversation goes as follows:

“Mr Khosa: you and I know the things that happened at the SETA has got nothing to do with us, but then Thula, I must tell you. Those guys sold him out.

Mr A: but OUTA has been there for years.

Mr Khosa: no but I don’t care about that. They gave them everything. Everything that you can think about to an NGO.

Mr A: ja. To them who has no authority.

Mr Khosa: I think he (Nongogo) must act. He must write to them...”

104. In paragraph 119, Khosa is quoted again with Ntumba, and their conversation goes as follows:

“Mr A: I don’t know what we have done wrong. I do not know.

Mr Khosa: we should try and stand our ground if we are right.

Mr A: remember OUTA is saying companies are not registered with FSCA. Payment companies don’t have to register with FSCA. They are not providing a financial product. They are misleading the public. There is no insurance services there, or credit loans or financial advice or FIAS.

We are registered at PASA – Payment Association South Africa. Banks are BASA – Banks Association South Africa.

Mr A: they are just misleading the entire public. But it is fine, let them make all these mistakes. I looked at that report, there is nothing. Let them continue writing and defame us. When we have to launch a defamation then we will do it. It will be broke. They are busy being clumsy.

Mr Khosa: we know that.

Mr A: Nedbank give us a sponsorship. They always come to our office. This is not an NSFAS capture. If you go to the card division, you can talk to Nedbank. We are known. Artwell was never part of NSFAS. Those directors were not appointed because of NSFAS. They were there in 2019. Andile left SETA when the company was formed. You know, let them continue doing what they are doing, chair. OUTA, the Afrikaners, they make me upset because they have been paid. And we know that. All of us seated here.”

105. OUTA has interpreted a reference to ‘we’ by Ntumba to be a reference to Coinvest. This is however speculative because there was nothing to suggest that he was referring to Coinvest. At best, he may have been referring to himself and Maluleke. But the fact of the matter is that Ntumba is neither a director nor shareholder at Coinvest or any of the entities that were appointed as service providers.

106. OUTA concluded that Ntumba was referring to Coinvest, and in so concluding relied on what Ntumba said about Mr Artwell Makellve, founding director of Coinvest Africa. Tshegofatso Ntumba has referred to him as Mariline Makellve. OUTA concluded that Mr Makellve was never part of NSFAS because he resigned as a director of Coinvest on 30 June 2021. But Ms Ntumba has contradicted this version during the interview when she said that the directors and shareholders of Coinvest is herself and Makellve. Surely Ntumba would know Makellve, despite that Ntumba is not a director and shareholder of Coinvest. This would be normal given that Ntumba is married to Tshegofatso Ntumba, who in turn is a co-director of Coinvest with Makellve.
107. What this conversation confirms is that Ntumba is one person who gratuitously makes allegations about people without evidence. In this conversation, he also claimed that OUTA has been paid to do the dirty work. He also provided no evidence to substantiate this claim. One can conclude that Ntumba, is one person who gratuitously makes reckless statements irrespective of their consequences. He, and Maluleke somewhere in the course of their conversation, made mention of the Auditor-General as someone they knew, and whom they could influence. They made mention of other people simply to create a false impression that they were highly connected.
108. In paragraph 124 of the OUTA report Ntumba and Khosa are quoted talking about the terms of reference. These were the terms of reference provided to Werksmans in the conduct of the investigation. The conversation goes as follows:

"Mr A: what is the scope, chair? Last time you said, you were going to do a TOR. You have said that the resolution was that you must do the TOR. Did you guys manage to do it, how was it structured?"

Mr Khosa: is done. These guys are checking process, they are checking those applications. The two basic things and our system."

109. In paragraph 125 OUTA concluded that this conversation and the question and comment from Ntumba confirms that Khosa and the service providers met before, and that Khosa was sharing internal Board decisions and information with the service providers. This statement is not accurate because when Khosa met with Ntumba and Maluleke during the first meeting, it was Ntumba who told Khosa that he knew somebody at Werksmans who would conduct the investigation and the outcome would not be challenged because it would come out under the name of Werksmans.
110. Ntumba wanted to know whether the terms of reference were drafted. Khosa confirmed that they were and that *"these guys are checking process, they are those allegations"*. By reference to these guys, surely Khosa was referring to Werksmans. In simple terms, what he conveyed to Ntumba and Maluleke was that the terms of reference were done, and Werksmans was busy with the investigation.
111. There is no reference in this conversation to any meeting that Khosa had with the service providers or Khosa sharing internal Board decisions with service providers. If reference to service providers is to Ntumba and Maluleke, these two were not service providers nor is there any evidence that they were acting

on behalf of service providers or as agents of service providers. In any event, what Khosa discussed with them, is clearly stipulated and reproduced in the OUTA report. What they have discussed with Khosa so far, in the first meeting, was about the appointment of a law firm, and the solicitation of the name of the law firm to be appointed, and during the second meeting, he only joined them an hour and half later. At that stage Ntumba and Maluleke were discussing among themselves and have intimated that they would confront Khosa about his conduct when he arrived, but they did not.

112. In paragraph 128, OUTA reproduced the conversation between Ntumba and Maluleke talking about the worst case scenario if the contracts were cancelled. Their conversation goes as follows:

“Mr A: because if you say, if a person loses the sponsorship, is like you have said that you have killed them.

Mr C: to lose a job is one thing but to be taken out of membership...

Mr A: then it makes people now to do a street fight. Which you don't want.

Mr C: so, but the chair I hear him to say that when the time comes for the report, we put heads together for what is the best course.”

113. The above quoted conversation confirms that Ntumba did not believe that he was instrumental in the appointment of Werksmans in order for the outcome of the investigation to be favourable. If he did believe so, there would have been no need for him to be concerned about the cancellation of the contracts.

114. To the contrary, neither Khosa, Ntumba or Maluleke knew what the outcome of the investigation would be. Ntumba withheld the recordings until the Werksmans report was released and adopted by the Board. This also dispels the notion that any influence was exerted on Werksmans on how to conduct the investigation.

115. In paragraph 130 of the report, Ntumba is quoted as saying:

"Mr A: we will make a plan. I don't think the source is key. At this stage is to try and see what we can do. But I don't think the source matters.

Chair knows we have been doing a lot of things even before this thing came. And the party that he belongs to, his Minister, he knows. We have been giving them serious things. Even before these things are here.

And the hole is huge. Because of historic and where we are coming from, you know. It's fine."

116. Ntumba's quote is incomprehensible. Ntumba thought that Khosa and the Minister were members of the SACP. His claim of the R1million donation was linked to that. The Minister is former General Secretary of the SACP. Khosa denied that he was a member of the SACP. The assertion by Ntumba made OUTA to conclude that Khosa and the Minister have a close relationship.

117. In paragraph 131 of the OUTA report, Ntumba is further quoted as saying:

"Mr A: and by the way, you know that company, its still operational. Is not that is a shell. That company they write about."

Even those T-shirts and the bags for the conference last year, we did that there. We are always doing things for the party. The ones for the conference for you."

118. This quote also persuaded OUTA to believe that Khosa is a member of the SACP, but still Ntumba did not put to him that he had donated R1 million to the SACP which he gave to Khosa. In paragraph 132, Khosa is quoted as having said "*can you imagine what happens if someone take a picture of us sitting like this?*".
119. OUTA concluded that this meant that Khosa was aware that he was meeting with service providers secretly and discussing confidential Board matters with them.
120. Lastly, in paragraph 133 of the report, Ntumba is quoted saying that he was once contacted by a journalist from the Sunday Times. This quote goes as follows:

"Mr A: these people how they write rubbish, you know. You realise there are so ill-informed. They brought that City Press, no it was Sunday Times. There is a company that they say, I am a member. You know that journalist send me questions. He said I am director. I have never been a director even once. Just because they are trying to put my name. In that bracket they write member. It's a Pty Ltd. Pty Ltd does not even have the members. They are saying that I am a member. I am not there. There is shareholders or directors. They say I am a member when I am not. But I am like, okay, all these things. When you take people head on one day. When the time is right."

121. Ntumba left the meeting and the recording stopped. OUTA correctly found that Ntumba carried the recording device because the recording stopped immediately after he left.

The terms of reference for Werksmans

122. Werksmans was appointed to conduct an investigation on the alleged irregular appointment of the four service providers to provide direct payment to students on behalf of NSFAS and to determine whether the CEO was involved in the irregular appointment of the service providers, make findings and recommendations to the Board.

Werksmans report

123. Werksmans conducted an investigation and made findings and recommendations. In respect of the findings, it made the following findings.

“Findings

1.1 it is clear that there was no feasibility study before this project was implemented. There is no reason which has been furnished to us why this was so. A feasibility study is a critical part of the project preparation period and would provide information on the following:

- 1.1.1 the current method disbursing student funds;*
- 1.1.2 the shortcomings of the existing method of disbursing funds;*
- 1.1.3 the proposed method of remedying the shortcomings;*
- 1.1.4 information about costs, both explicit and hidden;*
- 1.1.5 identification, quantification, mitigation, and allocation of risks;*
- 1.1.6 identification of constraints which may cause the project to be halted;*

- 1.1.7 *the impact of the proposed method on students, and socio-economic issues;*
- 1.1.8 *whether the project would provide value for money;*
- 1.2 *such an assessment would enable NSFAS to make an informed decision on the proposed solution and to evaluate the practicability, and chances of success of the proposed method;*
- 1.3 *we have already set out above that Mr Nongogo amended the bid specification to include Fintech companies, which resulted in the drastic changes in the mandatory requirements. Therefore, this would have required a feasibility study/needs analysis to be concluded;*
- 1.4 *Mr Nongogo's reasons for implementing a direct payment systems through the use of Fintech, are vague and wholly unconvincing. He explains that he found that the policy decision to implement direct payments already in existence when he arrived at NSFAS, and he nearly set the ball into motion again after several enquiries from NSFAS staff. This is contradicted by his own decision to Cancel the 2020 tender on the basis that it was not necessary;*
- 1.5 *he further intimated that certain universities did not pay student in time and that the TEVT wallet system was open to fraud and inconveniently required students to go to particular merchants to redeem their allowances. We do not find this justification to be acceptable. Mr Nongogo does not detail which institutions were failing in their duties of disbursing funds. Nor does he explain why if one or two institutions were breaching their duties, it was necessary to introduce such drastic and wide-ranging changes without any feasibility study of the immune system;*
- 1.6 *further, this explanation does not go far enough in justifying the use of Fintech companies, as he merely says that he wanted more value added services for students, than simply receiving their money. It is not clear to us how banking institutions would be unable to provide the value added services desired, as they already provide such to student with simple student accounts at a fraction of a price. And there is no explanation about the value added by the Fintech companies, which the students previously did not enjoy;*
- 1.7 *the bid specifications did not indicate what would be considered appropriate costs to students. It only contained the cost to NSFAS. This was a complete disregard of the functions that NSFAS seeks to achieve*

as it effectively opened up the gates to exorbitant prices. The reservation of the right to negotiate was simply not enough in this instance;

1.8 in the negotiation meetings, the service providers agreed on R89.00 as a cost to students. This price was agreed to by NSFAS and considered to reasonable;

1.9 Mr Nongogo, as the Chairperson of the negotiating committee failed to consider that this R89.00, was about 5-6% of the total allowance received by the student. This is an excessive amount of money considering that NSFAS provides funding to the most destitute students, who rely on that funding to sustain themselves;

1.10 Mr Nongogo does not provide an explanation on how such a cost to student heavy approach would be more beneficial to students. Social media posts, petition to the Public Protector, and protects stands on the exorbitant and hidden costs are an indication of the utter lack of concern for student when appointing the service providers.

1.11 it is of further concern that the NSFAS Board did not find the issue with Mr Nongogo's recommunication whilst it reflected such a high cost to students. The Board as the accounting authority hold fiduciary responsibilities towards NSFAS, such as the duty to act with fidelity, honesty, integrity and in the best interest of the public entity in managing the financial affairs of the public entity;

1.12 it is clear that had a feasibility study been concluded prior to the change of bid specification and that the re-issuing of the bid, NSFAS would have been able to identify whether there was indeed a pressing need for the direct payment system, and further, to assess the impact the system would have on students."

124. These findings are the direct opposite of what Ntumba and Maluleke wanted. What they wanted, at least from their conversation before Khosa arrived, was that the CEO should be cleared, and contracts of service providers be preserved. This did not happen. The findings were damning.

125. The finding was that the tender was awarded irregularly, and the CEO's conduct was condemned. Werksmans recommended as follows.

"Recommendations

- 1.1 *Mr Nongogo's conduct justifies the termination of his contract. Not only has he been grossly dereliction his duties, we have found some of his responses to us to be less than candid. We believe that the NSFAS Board should terminate his contract of employment for breach of trust.*
- 1.2 *NSFAS should subject all the BEC members Who are still within employ of NSFAS to a disciplinary enquiry for their failure and deliberate neglect of their duty to conduct a bid evaluation as prescribed in the 2021 SCM policy.*
- 1.3 *Furthermore, all the BAC members who are still in the employ of NSFAS must be subjected to a disciplinary enquiry, for approving the BEC's recommendation despite clearly raising concerns about the recommendation, such as the exorbitant student fees charged by the bidders and lack of a risk assessment.*
- 1.4 *Due to the irregularities in the appointment of the four service providers, we recommend that the contracts with the service providers should be cancelled on notice. Before the cancellation, the NSFAS Board should carefully consider that the termination should not have a negative effect on the students.*
- 1.5 *We have found that the minutes of the committee meetings were vague, and in some instances, inaccurate. Meeting minutes must be taken meticulously to reflect the true events of the proceedings.*
- 1.6 *Members of important committees such as BEC frequently absented themselves from meetings, and the committees barely met their quorum. An important aspect of a properly functioning organisation is a timeous attendance at meetings, the accurate recordal of minutes and ensuring that resolutions are implemented.*
- 1.7 *Meetings were also chaotic, with no structure, and members speaking over each other and with no respect to meeting procedures.*

- 1.8 *The CEO seemingly decided to involve himself in the entire process of considering the tender process, from evaluation to award, with no regard to procedures. The manner in which he did so shows general lack of compliance with the procedures applicable at NSFAS. There is a general climate of fear and bullying, which means that employees take unreasonable and unlawful instructions without any regard to established rules. The organisation appears to be in a chaotic state of dysfunctionality, which must be addressed urgently to restore proper governance.*
- 1.9 *The SCM policy has to be reviewed to clearly set out that the CEO is not permitted to be part of the process, as the SCN unit is housed under the CFO, and reports to the CEO.*
- 1.10 *The SCM policy should express that the CEO cannot be an end-user because his participation in the process before the recommendation is given to him compromises his independence.”*

126. These recommendations made in the Werksmans report were drastic, symbolising the seriousness of the transgressions. That was what Ntumba and Maluleke feared, hence they discussed how the contracts of service providers could be salvaged. They tried in vain to improperly influence Khosa to interfere with the investigation process but did not have the guts to confront him with direct instruction or request. On the other hand, Khosa was acting contrary to their wishes, hence they labelled him unreliable.

Interviews

Henrick Rudolf Heyneke

127. We interviewed Heyneke on 4 March 2024. Heyneke is employed by OUTA as Investigations Manager. He was tasked to investigate and prepare a report on

the two recordings that surfaced which were received by OUTA from a whistleblower. The relevant excerpts of the recordings have been analysed. Khosa, Ntumba and Maluleke were participants in the meetings discussed in the OUTA report and this report.

y

128. Heyneke conducted his investigation by listening to the two recordings of the two meetings that took place between Khosa, Ntumba and Maluleke. He indicated that he did not interview any person, nor did he rely on any documentation. He however mentioned that OUTA had been involved in conducting a few investigations at the alleged procurement irregularities at SSETA, and at NSFAS. He relied entirely on the two recordings and based on what he heard he produced the report which was signed off on 4 January 2024 by his line manager, Adv Stefanie Fick. After the report was signed off, it was then published on the OUTA website on 4 January 2024.

129. Heyneke provided the background and why OUTA investigated these recordings because it had been involved in other investigations at the SSETA. He repeated to a greater degree the contents of the OUTA report and the analysis of the audio recordings. He also dealt with matters which had been investigated by Werksmans regarding the direct payment system and the role of the CEO. He narrated the process that has already been outlined in the Werksmans report about the first and second tenders which were cancelled. The first tender was advertised under Bid No. SCMN006/2020. The second tender was advertised under Bid No. SCMN014/2020. The third tender, under

Bid No. SCMN022/2021 was adjudicated and awarded to the four service providers. It is this tender which was the subject of investigation by Werksmans.

130. Heyneke listened to the recording of the first meeting and made an analysis of the contents. He said he managed to identify Khosa's voice because he has heard him speaking on several occasions in public and in the media. He could not identify the voice of the other two individuals. He managed to identify Ntumba because Mr B and Khosa were at times referring to him by name during their conversation. He could not identify Mr B at all. He concluded that the first meeting took approximately 20 minutes. He based this contention on the length of the recording. Heyneke also listened to the recording of the second meeting. In this recording, he managed to identify Khosa and Ntumba. He could not make up whether the third person was Mr B who was present at the first meeting, or whether it was a new person that he identified as Mr C. By the time he finished listening to the recording, he was convinced that Mr C was the same person as Mr B. What he did not know was the name of this person he had identified as Mr B or Mr C.

131. Indeed, Heyneke was correct about the identification of the parties. He had identified in the report that Mr A was Thula Ntumba, but he could not identify who Mr B/C was. Subsequently after the publication of the OUTA report, he did further search or investigation to determine who Mr B/C was. His investigation concluded that Mr B/C was Joshua Maluleke. He provided us with a detailed explanation of what he found Maluleke to have been. He gave us Maluleke's ID number as well as his cellular phone numbers. He also gave us the list of

companies in which Maluleke is enlisted as either a director or shareholder or both. He also provided us with Mr Maluleke's partners or co-directors or shareholders in the companies that he has found Maluleke to be active.

132. Heyneke confirmed that Maluleke was not enlisted as a director or shareholder in any of the four companies that were appointed as service providers for the direct payment system. He also confirmed that Maluleke was not a director or shareholder of any of the companies that were enlisted with NSFAS to provide services to NSFAS. What he did say was that he was pretty sure that Khosa and Maluleke knew each other very well even more than the way Khosa and Ntumba knew each other.

133. With regard to Ntumba, Heyneke also stated that his investigations also showed that Ntumba was neither a director nor shareholder in any of the four companies that had been awarded the tender to provide direct payments system. What he did say was that Ntumba was the husband of Tshegofatso Ntumba, who was a director and/or shareholder of Coinvest and Star Signs & Print. Heyneke also admitted that Ntumba and Maluleke were not service providers of NSFAS.

134. With regard to the allegation that the Minister and Khosa received payment from service providers, Heyneke conceded that they did not receive money from service providers but according to Ntumba and Maluleke, they thought that Khosa received something from Fatima Habib when he visited London. He said that Fatima Habib was the director and/or shareholder of Fundi, an entity that also bided for the direct payment system tender, but it was unsuccessful. With

regard to why Khosa would receive payment from a company that lost the bid, he said it was probably in respect of future work tenders. There was however no indication that there were future tenders on the cards of which Fundi could qualify and be appointed.

135. With regard to the allegation that Khosa was paid R1.5 million, he actually conceded that Ntumba and Maluleke never said that Khosa received R1.5 million. According to his evidence during the interview, he suggested that according to Ntumba and Maluleke, this money was received by Khosa when he was in London. However, the finding made by OUTA is to the effect that Khosa received R1.5 million from the service providers and that the Minister also received money from the service providers. With regard to the Minister and Khosa, it was stated that they received R6 million from service providers.
136. In fact, the proper reading of the transcript of the audio recording, between Ntumba and Maluleke, before Khosa joined them in the second meeting, is about them having given the money to Khosa and not Khosa having received the money from Fatima Habib. All what they said was they 'think' that he must have received something when he was in London. Ntumba and Maluleke were simply speculating and were not saying anything as a matter of fact.
137. Heyneke also spoke about the conversation between Ntumba and Maluleke before Khosa arrived, and the negative sentiments they expressed against Khosa. They intimated that they would confront him when he arrived. They held a view that Khosa was handled somewhere. However, when Khosa arrived,

they said nothing which implicated Khosa in wrongdoing. Heyneke also could not offer assistance on why Ntumba and Maluleke refrained from confronting Khosa with incriminating allegations when they had the opportunity to do so, especially when Ntumba was recording the conversation. Whilst reasons for Ntumba and Maluleke's silence are unknown, since Ntumba and Maluleke avoided being interviewed, it could not be unreasonable to conclude that Ntumba and Maluleke knew that the allegations were unsubstantiated, and Khosa would deny them. A reasonable inference that could be drawn from their silence on incriminating allegations they were making against Khosa is that Khosa would not confirm receipt of the money from the service providers or London. Any denial of the allegations by Khosa would render the purpose of the recording nugatory and useless. Ntumba was placed in the position of a whistleblower when he recorded the meetings. The purpose could only be to refer the incriminating evidence to the law enforcement agencies. Heyneke said the recordings were received from a whistleblower in October 2023, coinciding with the submission of the Werksmans report to the Board.

138. We also engaged Heyneke on the OUTA findings about how Werksmans was appointed. He cleared this issue and made it clear that it was not his intention to give the impression that Werksmans was appointed on undue influence of Ntumba, and that a reference to "the plan having backfired" was an unfortunate use of words in the report.
139. We agree that there is no evidence that Werksmans was appointed as a result of undue interference by Ntumba. We agree with OUTA that reference to a plan having 'backfired' was unfortunate use of words, which gave an incorrect

impression that Werksmans was party to the illegality. As we have already stated, Heyneke said that he had apologised to Mr July.

140. Heyneke said he did not believe that Werksmans was involved in wrongdoing, and that it was not his intention to create an impression of impropriety on the part of Werksmans.
141. What we established when we interviewed Khosa, was that Ntumba was untruthful in several respects. He was untruthful about knowing a black partner at Werksmans who could conduct an investigation improperly. He could not provide the name of the partner under consideration at Werksmans and could still not provide the name during the second meeting.
142. Besides, the transcript of the recordings does not support Ntumba's claims. The transcript, and Khosa's intimation, the Board's resolution to place the CEO on special leave and institute an investigation was taken on 14 August 2023, and Khosa met with Ntumba and Maluleke on the 15th of August 2023 and a press release was made by NSFAS on 16 August 2023. OUTA also confirms in its report that Khosa met with Ntumba and Maluleke before the issuing of the media statement of 16 August 2023.
143. Heyneke also dealt with the allegation that Khosa frustrated the implementation of the resolution of the Board regarding the implementation of the Werksmans report. He said so because according to him, this was as a result of the interference and influence of Ntumba and Maluleke, who intimated that the investigation should take three to four months, and the service providers should

not be terminated, but if terminated, the termination should not be before end of December 2023. Whilst OUTA reached this conclusion on inferential reasoning and concluded that the Board adhered to Ntumba and Maluleke's inclinations, the Werksmans report contradicted any of the inferences drawn by OUTA.

144. An inference drawn must be supported by evidence. No evidence that supports this inference was found. The three to four months grace period was simply Ntumba and Maluleke's wish, but it was never adhered to. There is no evidence that such wish was carried to the Board and debated in the Board meeting(s). Ntumba and Maluleke complained to themselves about Khosa's conduct, and his refusal to extend the period of investigation to three months. They bemoaned that Khosa wanted to 'kill the service providers. At the Board level what happened was that on receipt of the Werksmans report, the Board tabled it in its meeting of 15 October 2023, debated it and adopted it in full. It resolved that the recommendations be implemented in full.

145. What Heyneke did not have the benefit of, was the internal workings within NSFAS as to what steps were being taken internally. In fact, objectively, what had taken place was that a legal opinion was sought from a law firm in Nelspruit, Obed Ntuli Incorporated Attorneys who provided a report or an opinion which the Board was not satisfied with. We were indeed favoured with the opinion of Obed Ntuli Incorporate which we perused. It appears that Obed Ntuli was instructed to deal with other matters other than the pertinent issue of how the Werksmans recommendations should be implemented with regard to the cancellation of the contracts of the service providers. The opinion of Ntuli did

not specifically advice on that particular aspect. It however advised on other aspects regarding whether fraud was perpetrated against the students in receiving their allowances.

146. This necessitated that another opinion be sought from Cliffe Dekker Hofmeyr Attorneys, who briefed senior counsel to provide legal opinion. Senior Counsel provided legal opinion on 21 November 2021. In this opinion, what was sought was whether the contracts of service providers could be cancelled on notice as recommended in the Werksmans report and if so how should NSFAS go about doing so. In fact, the legal opinion from senior counsel concluded that the appropriate cause of action was a self-review application to the High Court in which NSFAS would seek an order to review and set aside the contracts concluded with the service providers on grounds of legality. The opinion left open the option of termination of contracts on notice as recommended in the Werksmans report. This option was left open for consideration by NSFAS if sufficient evidence becomes available to buttress this option.
147. The Board subsequently instructed Werksmans to advise on the implementation of the termination option. Werksmans is considering the matter currently.
148. These developments put to bed the notion that the Chairperson and the Board frustrated the implementation of Werksmans recommendations. OUTA would have reached a different conclusion if it was aware of these developments.

149. Heyneke's interview was concluded.

Sandile July

150. We interviewed Mr July on 6 March 2024. Mr July was instructed by the Board of NSFAS, through Khosa, to conduct an investigation. According to Mr July, he received the instruction from NSFAS because Werksmans is on the database of NSFAS, and it has done work for NSFAS in the past and it still has some work that it is still doing for NSFAS. So Werksmans was not new to NSFAS as it is in the database, and it is actively being utilised by NSFAS for any legal services that are required to be rendered.

151. Mr July dismissed the suggestion in the OUTA report that Werksmans was improperly appointed by Khosa on undue influence by Ntumba. He said Khosa never discussed with him what should be the outcome of the investigation. Mr July also said that he did not know Ntumba and Maluleke. He has never met them. He did not listen to the recordings of the meetings between Khosa, Ntumba and Maluleke. But he read about them in the media. He also did not read the OUTA report and that he has never seen it. OUTA did not furnish the report to him. This was also confirmed by Heyneke when we interviewed him. He read in the media that OUTA had said in its report that the plan of appointing Werksmans 'backfired' when Werksmans produced different outcome in its report.

152. Prior to the release of the OUTA report, Mr July was phoned by Heyneke at the beginning of December 2023. Heyneke wanted to know if Mr July was in Johannesburg. Mr July responded in the affirmative but indicated to him that he would be leaving Johannesburg for the festive season. Mr Heyneke intimated that he wanted to see him regarding the investigation OUTA was conducting. He said he would phone Mr July and arrange a meeting with him.
153. Mr July said that Mr Heyneke phoned again around 7 December 2023. He wanted to arrange a meeting with Mr July. Mr July told him that he was already on vacation out of Johannesburg. Their conversation ended that way.
154. Mr July phoned Mr Heyneke in January 2024, when he heard that OUTA had alleged in its report that the plan to have Werksmans appointed 'backfired' when Werksmans released its report with adverse findings and recommended the termination of the contracts of the service providers. He demanded to know from Heyneke why OUTA reported that the plan had 'backfired'. Heyneke said that was the reason why he wanted to meet with Mr July in December 2023. But Mr Heyneke had apologised to Mr July and said that was unfortunate choice of words.
155. We asked Mr July on his second interview on 22 March 2024 as to when he spoke to Khosa about the instructions to conduct an investigation. Mr July located from his cellular phone a WhatsApp communication from him to Khosa in the morning of 15 August 2023 in which he forwarded to Khosa a draft letter of placing the CEO on special leave pending the investigation. The WhatsApp

was sent at 7h59. Khosa responded by WhatsApp the same day at 9h55 in the morning.

156. Mr July had tried to locate an earlier communication which gave the instruction but could not find it. He was certain that having executed an instruction of drafting a letter placing the CEO on special leave so early in the morning, he could only have received the instruction the previous day.

157. This concluded the interview of Mr July.

Ernest Khosa

158. Khosa was interviewed on 11 March 2024. He was interviewed and a wide range of issues pertaining to the terms of reference and the allegations pertaining to the two audio recordings. First, Khosa admitted that he did hold two meetings with Ntumba and Maluleke. He mentioned that he knew both of them very well, but they were not his friends nor were they his comrades. He mentioned that he knew Maluleke from many years ago and he knew Ntumba from somewhere around the mid 2000 (around 2004/2005). This means that Khosa and Ntumba have known each other for more than 15 years.

159. With regard to his relationship with Maluleke, he mentioned that they belong to the same Non-Governmental Organisation ("NGO") called Rixaka, a Tsonga word which means build each other or build one another as a family.

160. Khosa confirmed that it is his voice in both recordings, and that the other two individuals were Ntumba and Maluleke. The meetings had taken place on invitation by Maluleke. Maluleke did indicate to him when inviting him to the meeting, as to the purpose of the meeting. Khosa said Maluleke is a businessman with business interests in mining. Maluleke also told him that Ntumba would be in attendance too. Ntumba is a businessman too. He too has business interests in mining.
161. Khosa acceded to the meetings. He attended the first meeting at the restaurant at O R Tambo International Airport. He said he did not trust Ntumba and Maluleke at that time because of the things that were happening to him such as threats to his life and that of his family members. Despite distrust, he met with them and discussed issues involving NSFAS and the Board. Khosa told us that whilst he knew Ntumba, he did not know that Ntumba's wife's company was doing business with NSFAS. He was upset that Ntumba never disclosed this fact to him.
162. Whilst the recording of the first meeting lasted for approximately 20 minutes, Khosa disputed that the meeting lasted 20 minutes. He pointed out to the fact that the recording started in the middle of a conversation, indicating that the recording was set midway the conversation. He said the purpose of the meetings was to discuss mining opportunities, given that both Ntumba and Maluleke had business interest in mining.

163. He spoke about the tender that was under investigation by Werksmans. He said this tender was a hot potato from the beginning. A lot of people had shown interest on how it was awarded. This included the youth wing of Action SA, which threatened to challenge the award of the tender at Court.
164. Khosa said he had been threatened and followed by unknown people.
165. With regard to the recording of the first meeting, it is indeed so that it does not start at the beginning. It is not known how long the conversation had been going on before the recording started. Khosa said the meeting lasted for about 30 minutes, which means there is the first missing ten minutes of conversation. Khosa said they discussed mining in those ten minutes. If that were so, then they allocated the shortest time possible to the very subject that gave rise to the meeting and took twenty minutes talking about NSFAS.
166. On NSFAS, the recording of the first meeting reveals their discussion about appointing a law firm to conduct an investigation. Ntumba was leading this discussion. What is astonishing is that Khosa did not disclose to Ntumba and Maluleke that he had already contacted Werksmans. He created a false impression that Werksmans was not yet appointed, and that he was still considering a law firm to appoint.
167. Khosa engaged Ntumba on this discussion, including asking him about the name of a partner at Werksmans who would investigate. Ntumba could not provide the name.

168. Khosa denied that he discussed internal Board decisions or resolutions with service providers or that he discussed same with Ntumba and Maluleke. With regard to the meeting that he held with Ntumba and Maluleke, he said that he met them in the evening of 15 August 2023. He said that the Board had taken a resolution on 14 August 2023 to place the CEO on special leave, and institute an investigation on his role on the appointment of the four service providers.
169. He was mandated to prepare the terms of reference on the framework given by the Board and appoint a law firm. He said he communicated with Mr July in the morning of 15 August 2023. He was asked to produce proof of his claim. He undertook to provide us with proof. Khosa returned a while later to the offices of TGR with the proof which he showed Mr Tshisevhe on his cellular phone. In fact, the communication had started on the 14th of August with Mr July.
170. What Khosa said was that at the time when he met Ntumba and Maluleke in the evening, he had already instructed Werksmans to conduct an investigation, all what was left was the formalities of sending an appointment letter with the terms of reference.
171. When asked why he did not disclose to Ntumba and Maluleke that he had already engaged Werksmans, he said he wanted to play them along. He did not want to give them correct information.
172. What remains unclear is how did Ntumba know that Werksmans had been identified and appointed as the law firm that would conduct investigation and

why he was raising it with Khosa when Khosa had already communicated with Mr July.

173. On the allegations that he received money from service providers, Khosa denied the allegations. He also denied that Ntumba and Maluleke were service providers. He confirmed that he did travel to London, but he never met Ms Fatima Habib, although he admitted that he did know her.

174. Khosa also denied that he is a member of the SACP. He denied that he is the friend of the Minister nor is the Minister somebody who operate within his circle of people that he socialises with. He denied that he was hand-picked by the Minister to be a member and Chairperson of the Board of the South African Civil Aviation Authority in 2019. He said that when the Minister was appointed as Minister of Transport, his name had already been shortlisted to be appointed and the Minister simply completed the already commenced process and made the appointment. The selection process was commenced by the previous Minister through the internal processes applicable, and the Minister on his arrival simply gave effect to what was already in progress. He said that in fact, after the Minister had left and to become Minister of Higher Education, Science and Innovation, Khosa had been reappointed by two other successive Ministers to the same Board and retained as Chairperson.

175. He also denied that he had been hand-picked by the Minister to be member and chairperson of NSFAS. He said that a particular process is applicable in which the appointment process is commenced with the nominations,

publication in the gazette and the Minister's role come at the tail end when he is required to make the appointment.

176. With regard to him frustrating the implementation of the resolutions of the Board regarding the implementation of the recommendations of the Werksmans report, he stated that that was not correct. He first referred to his media address of 18 October 2023, in which the Board announced to the public that it had accepted the recommendations of the Werksmans report in full. In his address to the media, he stated that *"the Board, met on the 15 October 2023 here in Pretoria to consider the findings and recommendations by the investigators as captured in this interim report as presented by the Werksmans Attorneys and Adv Tembeka Ngcukaitobi SC. The Board has since adopted recommendations of the report and resolve to implement them"*.

177. He also stated that on 17 October 2023, they as a Board met with the Minister and briefed him on the outcome of the investigation which culminated in the Werksmans report. The Board accepted the Werksmans report as the Board report and that it would implement it in its entirety. He mentioned in the address to the media that they also met with the representatives of the four companies that provide direct payment services, to bring to their attention the contents of the Werksmans report and the implications that follow. He said that he informed them that the recommendation made by Werksmans was that their contracts be terminated.

178. Khosa said that in fact he met with the service providers in the morning of 18 October 2023 and informed them about the implications of the report and thereafter addressed the media. He did not want the service providers to hear for the first time in the media that their contracts were going to be terminated. Khosa said that that was the first time he met with service providers. He said he has never met with service providers before 18 October 2023.
179. The finding in the OUTA report that Khosa met with service providers multiple times is not supported by evidence.
180. Khosa had briefed the media and said that the Board was committed to implementing the resolutions of the Werksmans report with effect from that day. One of the recommendations was that the contract of service providers be terminated. The first recommendation was that the contract of employment of the CEO be terminated forthwith. That recommendation was implemented immediately.
181. With regard to the recommendation that the contracts of service providers be terminated, Khosa took us through the chain of events which have occurred from 15 October 2023 when the Board adopted the resolution accepting the recommendations of the Werksmans report in full. He said that firstly, the Board considered that it was towards the end of the year and any step to be taken should not disrupt the payment of allowances to the students. The Board also wanted to explore how the termination should occur.

182. The Board sought legal opinion from Obed Ntuli Incorporated in Nelspruit and the opinion did not address the issue. The Board sought another opinion from Cliff Dekker Hofmeyr, in Sandton, who briefed senior counsel. Senior Counsel concluded that a self-review of the contracts in the High Court was appropriate. He did not discount other options. The Board reverted back to Werksmans and sought legal advice on how to implement the termination of contracts recommendation.
183. Whilst the Board was grappling with these legal complexities, it engaged universities to disburse allowances to students.
184. On this chain of events, Khosa denied that he frustrated implementation of the Board's resolutions. Based on this explanation, supported by objective facts, we conclude that the allegation that Khosa frustrated the implementation of the resolutions of the Board is not substantiated.
185. This concluded the interview with Khosa.

Julie Beya

186. We also interviewed Ms Julie Beya, a member of the Board of NSFAS. She somewhat corroborated the version of Khosa on the process leading to the appointment of Werksmans, and that subsequent to the release of the Werksmans report and the adoption of the report by the Board, an ad-hoc committee was established by the Board to deal with the issue of direct

payment system in light of the recommendation by Werksmans that the four service providers contracts be terminated.

187. The ad-hoc committee was to look at issues that may affect the payment of allowances to students and to minimise any adverse effects which arise thereto. The Board also had looked at developing a business case and considered a close tender to the banking institutions.
188. Beya also dealt with the steps taken by the Board in 2024 as recorded in the media release of 10 January 2024, the media briefing of 4 March 2024 and the media release of 9 March 2024.
189. Beya denied that the Board acted improperly or unlawfully when it delegated the authority to appoint a law firm to conduct an investigation and to craft the terms of reference to Khosa. She also mentioned that there was no failure by the Board and the chairperson in having the resolutions of the Board implemented.
190. On the reasons why the Board mandated the chairperson to appoint a law firm and craft the terms of reference for the investigation, she corroborated Khosa on the sensitivity and the prevailing atmosphere of distrust and leakages at NSFAS at the time.

Bamanye Matiwani

191. We also interviewed Mr Bamanye Matiwani, a Board member of NSFAS. He corroborated Khosa and Beya that the Board implemented the Werksmans report and that with regard to the termination of the contracts of the service providers he mentioned that the Board took into account that the termination should be done in a manner that did not prejudice the students regarding disbursements of allowances to them.
192. He denied that he ever attended a meeting with the Minister and Khosa at the airport.

Maxwell Fuzani

193. We also interviewed Mr Fuzani on a virtual platform, who is also a member of the NSFAS Board. Fuzani also corroborated Khosa, Beya and Matiwane in relation to the Board resolution to appoint Werksmans and why the Board mandated Khosa to appoint a law firm and craft the terms of reference. He corroborated the version about the sensitivity of the matter and the prevailing atmosphere of distrust.
194. Fuzani denied that the Board abdicated its duties and failed to implement the Werksmans report.

Mr Ryan Passmore

195. We interviewed Mr Passmore on a virtual platform. He was accompanied by Nicky Pillay, an attorney at Nicky Pillay Attorneys. Passmore is a director at Tenet Technology (Pty) Ltd. He denied ever giving money to Khosa or the Minister. He said, none of his fellow directors met with Khosa or the Minister. He met with Khosa for the first time at the formal meeting of the Board with all four service providers on 18 October 2023 when the Board communicated to the service providers the outcome of the Werksmans investigations. He said he never met with the Minister physically. The only time he met with the Minister was in a formal virtual meeting which had to do with the Parliamentary Portfolio Committee pertaining to the direct payment system.

196. He said he met with Thula Ntumba once in a meeting of service providers. NSFAS was not represented as the meeting was exclusively of service providers. He understood his attendance to be a representative of Coinvest Africa (Pty) Ltd.

Mr Ishmail Ally

197. We also interviewed Mr Ally on a virtual platform. He was accompanied by Mr Shaheed Dollie, an attorney from Shaheed Dollie Attorneys. Mr Ally is a director of eZaga Holdings (Pty) Ltd. He also said that the first time he ever met Khosa was at the meeting of 18 October 2023, when the Board communicated to the service providers the outcome of the Werksmans report.

198. This meeting was preceded by a formal invitation that was sent to the service providers on 17 October 2023. He said that the meeting of 18 October 2023 was a formal meeting with minutes taken. He emailed us the minutes and the invitation of 17 October 2023 after the interview.
199. He denied ever giving money to Khosa or the Minister. With regard to the Minister, he said that he met the Minister once at a formal meeting in which the service providers and the Board members were in attendance.
200. With regard to whether he knew Thula Ntumba, he said he did not know Ntumba, and has never met him in project meetings convened by NSFAS with the service providers. When asked if he knew a representative of Coinvest, he said he knew Thami Mazibuko as the representative of Coinvest who attended such project meetings on behalf of Coinvest. He said he did not know Tshegofatso Ntumba.

Ms Joyce Moloji-Moropa

201. We interviewed Ms Moloji-Moropa on 21 March 2024 on a virtual platform. She is the National Treasurer-General of the SACP. She denied that the SACP received R1million as donation for its 15th National Congress from Ntumba, or from Five Star Communications/ Star Sign and Print, a company that Ntumba alleged in the recordings that it was his company. She also denied that this

company printed t-shirts for the SACP's 15th National Congress that was held around July 2022.

202. When asked if she received money from Khosa as donation from Ntumba, she denied the allegation. She explained the process in which donations are sourced and received by the SACP. She intimated that all donations of the SACP are received by her as Treasurer-General, and those who have donated receive a certificate of thanks. If Ntumba had donated, he would have been among those who received a certificate. When asked if she knew Mr Ngwenya Baloyi, she said she did not.

Ms Tshegofatso Ntumba

203. We interviewed Ms Tshegofatso Ntumba ("Ms Ntumba") on a virtual platform on 22 March 2024. She was recovering in hospital after surgery when we interviewed her. She attended the interview with her attorney, Mr Mxolisi Zwane from Nelspruit.
204. Ms Ntumba said she is a director and shareholder, together with Mr Mariline Makellve ("Makellve") at Coinvest. They are shareholders on an equal basis at Coinvest. She confirmed that Mr Thami Mazibuko is employed by Coinvest as project manager. Mr Mazibuko was responsible for the project implementation of the direct payment system contract, and he was the one tasked with attending all project meetings called by NSFAS officials. These meetings were attended by technical people such as Mr Mazibuko and that she never attended

any of these meetings. Although she said Makellve was a director and shareholder she did not explain what role he played in the direct payment contracts.

205. Ms Ntumba is also a director and shareholder of Star Signs and Print together with Mr Thabile Ngwenya (“Ngwenya”). This is the company that was alleged by Ntumba to have printed T-shirts for the SACP 2022 Congress for free. Ms Ntumba is married to Ntumba, and they live together as husband and wife. Ntumba is a businessman who has his companies focusing primarily on mining. Ntumba is neither a director nor shareholder in Coinvest. Ms Ntumba told us that Ntumba is not employed by Coinvest, nor is he a director or shareholder.

206. She said that Ntumba is not involved at all in the business of Coinvest. Whilst she confirmed that she did listen to the recordings in which Khosa, Ntumba and Maluleke were having conversation, she did not want to be drawn into identification of the persons in the recordings. She denied having mandated Ntumba to meet with Khosa and speak on behalf of Coinvest. She said that she has never met Khosa. She denied the allegation that Coinvest has given money to Khosa or the Minister. She denied that Star Signs and Print donated T-shirts to the SACP, and also denied that she made any donation to the SACP.

207. Ms Ntumba offered to make available bank statements to us if needed.

208. We conclude that Ms Ntumba is a passive director of Coinvest and Star Sign & Print. She left the running of the day-to-day activities of Coinvest to Mazibuko.

The role of Makellve remains unclear. It is possible that Makellve had resigned as director of Coinvest in 2021 as intimated by OUTA in its report. We could not interview Makellve due to time constraints.

209. It is also possible that her passiveness in the affairs of the company created a room for Ntumba to misrepresent to the unsuspecting people that he was a director or representative of Coinvest and that he could speak on behalf of Coinvest. People could have no reason to disbelieve him when the actual directors and shareholders of Coinvest remain supine.
210. This concluded a series of interviews we conducted. On the service providers, we interviewed three of the four service providers. We did not interview representatives from Norraco Corporation because of their unavailability on dates suggested. The dates they proposed were not feasible given the timelines for the submission of the report to the Board.

Whether the chairperson acted outside the NSFAS Board resolutions regarding the investigation against the CEO and the irregularities in the procurement of the direct payment system.

211. In the Board meeting of 14 August 2023, the Board adopted a resolution in which it instituted an investigation against the CEO. This was occasioned by the reports that had been issued by OUTA and the media that the CEO has acted improperly in the awarding of the tender to the four service providers regarding the direct payment system. It was alleged that the tender was awarded irregularly. The investigation was to establish whether the tender was

awarded irregularly and whether the CEO played a role in the irregular award of the tender.

212. We interviewed three members of the Board who denied that the chairperson acted outside the resolutions of the Board. Their denials in order to be accepted as plausible must be buttressed by objective facts. Firstly, it must be ascertained what the resolution of the Board entailed, and secondly whether Khosa acted outside its scope.

213. The resolution of the Board was to institute an investigation and appoint a reputable law firm to conduct an investigation, and the chairperson be mandated to select a reputable law firm to conduct an investigation, and craft the terms of reference within the framework of the Board's resolution. In adopting the resolution and mandating the chairperson to select a law firm and craft the terms of reference, the Board was deeply concerned about the leakages that were happening at that time regarding sensitive matters discussed in the Board room. There was an atmosphere of distrust that was prevailing at that time within NSFAS.

214. The person who was fingered in the alleged wrongdoing of the irregular appointment of the service providers was the CEO of the organisation. It would have made no sense to task the very person fingered in the allegations to appoint a law firm which would investigate him. Similarly, it would make no sense to direct that officials who report to the CEO be tasked with the appointment of the law firm that would investigate their Boss.

215. So, the decision of the Board to mandate the chairperson to appoint a reputable law firm to conduct an investigation and craft the terms of reference for the investigation within the framework of the resolution of the Board was a rational decision informed by the prevailing circumstances at the time and was not unlawful.

Chairperson's failure to implement the resolutions of the Werksmans report.

216. One of the allegations made in the OUTA report is that Khosa frustrated the implementation of the Board's resolutions regarding the recommendations of the Werksmans report and subsequent resolutions intended to give effect to the recommendations of Werksmans.
217. Whether or not Khosa frustrated the implementation of the recommendations of the Werksmans report must be considered within the prism of objective facts. Werksmans tabled its report before the Board in the Board meeting of 15 October 2023. The Board deliberated on the report and adopted the report and its recommendations in full. It immediately terminated the CEO's contract of employment, who unsuccessfully challenged his dismissal at the Labour Court on an urgent basis.
218. With regard to the termination of the contracts of the four service providers, the Board was concerned about the impact it would have on the disbursement of

allowances to students if the termination were effected instantly. The Board was even more concerned about the effect this would have on the students' preparations for their year-end examinations given that the Werksmans report was released during this critical time of year-end examinations. Students would need money for food and accommodation, and any disruption of the disbursements would detrimentally prejudice the students.

219. But the Board did not fold its arms after the Board meeting of 15 October 2023. On 17 October 2023, the Board invited the four service providers to a formal meeting at NSFAS offices for the morning of 18th of October 2023. The purpose of the meeting was to brief the four service providers about the outcome of the Werksmans investigation and the recommendations made in the Werksmans report which the Board has adopted.
220. On 17 October 2023, and prior to meeting the service providers and briefing the media on 18 October 2023, the Board met with the Minister and briefed him on the outcome of the Werksmans investigation.
221. Subsequently, the Board met with the service providers on 18 October 2023 and briefed them about the outcome of the Werksmans investigation and the recommendations thereat. This was to ensure that the service providers did not have to hear about the possible termination of their contracts in the media. The service providers were addressed by Khosa in the presence of other Board members in that meeting. They asked questions and also requested to be

furnished with a copy of the Werksmans report, which was never furnished to date.

222. Later that day, 18 October 2023, the Board briefed the media about the outcome of the Werksmans report, and the recommendations thereat. Khosa, in his capacity as the chairperson of the Board briefed the media. He informed them about the Board's decision. He communicated four decisions of the Board as follows:

222.1 write to the CEO, Mr Andile Nongogo and grant him an opportunity to advice on why his contract should not be terminated.

222.2 Subject all staff members associated with wrongdoing, as mentioned in the report to a disciplinary enquiry.

222.3 Advice all the four direct payment service providers that their contracts will be terminated. The Board will ensure that this termination does not affect the students negatively. In this regard, the Board is mindful of the universities they have met and expectations they had over next step it will take into account within the law and the implications to service delivery.

222.4 Review the Supply Chain Management (SCM) Policy, in line with the National Treasury Regulations and Policies, including the PMFA.

223. Khosa then promised that 'all these decisions of the Board would be implemented progressively from that day of the media briefing, 18 October 2023'.

224. Indeed, the first decision to be implemented swiftly was the termination of the contract of employment of the CEO. The Board dealt with the implementation of the decision to terminate the contracts of the service providers by seeking legal opinions. As we said above, the first legal opinion was sought from Obert Ntuli Incorporated Attorneys of Nelspruit. This opinion did not deal with the issue of the termination of the contracts of the service providers as recommended in the Werksmans report. It dealt with 'complaints related to alleged exorbitant banking fees/charges to students by direct payment service providers and fraud perpetrated against students. So, the legal opinion was not helpful in addressing the issue at hand.
225. The second legal opinion was sourced from Cliffe Dekker Hofmeyr ("CDH") who briefed senior counsel to provide legal opinion. This legal opinion addressed the pertinent issue and advised accordingly. It concluded that a self-review application which may be brought on a semi-urgent basis at the High Court would be the most appropriate option but did not rule out the option of termination of contracts of the service providers as recommended by Werksmans if good grounds exist for termination on notice.
226. This prompted the Board to return to Werksmans for advice on how the Board should give effect to the termination of the contracts of the service providers as recommended in the report. Werksmans is still working on this brief and the outcome is not known yet.

227. The third decision of subjecting employees fingered in wrongdoing in the Werksmans report is currently in the implementation stage through internal processes of NSFAS.
228. So, the contention that Khosa contributed to any failure to implement the resolutions of the Board regarding the Werksmans report is not borne by evidence. On objective facts, the Board is implementing the recommendations of the Werksmans report in full and has implemented others already.
229. By November 2023, the Board had already obtained two legal opinions, and had resolved to instruct Werksmans to advise on the implementation of the termination of the contracts of the service providers. The Board is working with Werksmans on this issue to date.
230. At a special Board meeting of 10 January 2024, Khosa requested to take a 30 day leave of absence in order to enable the Board to deal with all the allegations against him as contained in the recordings distributed by OUTA and the OUTA report. In that meeting, the Board resolved to appoint an independent law firm to look into the veracity of the allegations against the chairperson. The independent law firm would be expected to submit its findings within 30 days of its appointment.
231. In its media statement released on 10 January 2024, the Board assured the public that the process of appointing a new CEO is underway.

232. In its media release dated 9 March 2024, the Board referred to its media briefing of 4 March 2024 in which it said that universities would facilitate the payment of allowances to students for the months of February and March 2024. It reported that twenty five out of twenty-six universities paid the February allowances as per their commitment dates. All universities would be handling the payment of the March allowances. Tertiary institutions were reminded to allow direct payment service providers to conduct the process of onboarding students whilst they continue with the payments.
233. Universities were also reminded that direct payments of allowances for the 2024 academic year will commence in April 2024. With regards to the TVET colleges, the Board recorded in the same media briefing that the process of the payment of allowances to the TVET colleges commenced on 6 March 2024, and that further details will be provided on the process going forward.
234. What all these activities symbolise is that the Board was at work grappling with the issues presented by the Werksmans report and attempting to minimise the disruptions that may ensue arising from the implementation of the recommendations. The notion that the Board was supine or complicit in the delayed implementation of the Werksmans recommendations is not supported by the facts. Neither is the allegation of the chairperson's failure to implement the resolutions sustainable on the facts.
235. In terms of the Act, the Minister is required to appoint thirteen fit and proper persons as members of the Board. The Act imposes fiduciary duties on them

individually and cumulatively. They are required to uphold corporate governance in the institution and to act within the law. A suggestion that one person, even if holding an influential position of chairperson would run rough shots on the remaining twelfth or whatever number the Board is constituted at the relevant time is simply theoretical, and somewhat removed from reality.

Legal prescripts

236. NSFAS was established in terms of section 3 of the NSFAS Act. It is managed, governed and administered by the NSFAS Board. Its function primarily is to allocate funds for loans and bursaries to eligible students. Its object among others is to redress imbalances caused by past discrimination of the students from previously disadvantaged background so that they may receive tertiary education which would enable them to actively participate in the mainstream economy of the country.
237. The Board of NSFAS is appointed by the Minister. Its composition is set out in section 5 of the Act. The Board consists of thirteen members appointed by the Minister and must consist of members from diverse background as set out in section 5(1)(a) of the Act. They are appointed for a term of four years. The current Board's term comes to an end in December 2024, having been appointed in December 2020, with its term having commenced in January 2021.
238. The Board appoints an executive officer as contemplated in section 9 of the Act to manage and administer the affairs of the NSFAS under the authority of the

Board, and it may appoint such other employees as it deems necessary to assist the executive officer.

239. The Board must establish an executive committee and determine its functions as contemplated in section 10 of the Act. The Board must appoint a finance committee in terms of section 11 and the Audit committee in terms of section 15 of the Act. The Board may establish other committees as contemplated in section 12 of the Act.

240. Further, there is a Board charter. Its preamble is clear. It reads as follows:

"2. Preamble

2.1 the establishment of the NSFAS Board (the Board) is a requirement of the Public Finance Management Act 1 of 1999 (PFMA), as amended; the National Student Financial Aid Scheme Act 56 of 1999 (NSFAS Act), as amended; and the prevailing treasury regulations;

2.2 in terms of the legislation, the NSFAS Board as the accounting authority reports to the Minister of Higher Education Science and Technology (the Minister), the executive authority;

2.3 the NSFAS Board aligns with the king (iv) code on corporate governance to maintain the highest standards of corporate governance within the organisation."

241. In terms of clause 3.2 of the charter, the Board is required to manage the business of the entity. The charter provides the roles, responsibilities, functions, and powers of the NSFAS Board, Board members, the CEO, and executives of the entity. The powers delegated to various Board committees of the entity; relevant principles of the entity's limits and delegations of authority and matters reserved for final decision-making or preapproval by the Board; and the policies

and practices of the Board in respect of matters such as corporate governance, funding management of the entity, ethics management, declarations and conflicts of interest, Board meetings documentation and procedures, induction, training, and evaluation of Board members and members of Board committees.

242. The role of the Board is set out in clause 5 of the charter. Clause 5.1.1 provides that: "the NSFAS Board has absolute responsibility for the performance of the organisation and is fully accountable to the Minister for such performance. As a result, the Board should give strategic direction to the entity and appoint the Chief Executive Officer ("CEO").
243. The Board's fiduciary duties and responsibilities are set out in section 50 to section 55 of the PFMA, which must be complied with. Inter alia its duties include compliance with the applicable laws, regulations, government policies, and codes of business practice and communicating to the entity and the relevant stakeholders openly and promptly.
244. Clause 5.1.6 states that the Board must monitor and manage potential conflicts of interest of management, Board members, and the employees. The Board (and each other) must not accept any payment, whether in the form of a commission, bribe, or gift, for him/herself other than the Board fees as prescribed in terms of the national treasury of regulations.
245. Clause 7 of the Charter deals with 'powers reserved to the Board. Clause 8 deals with Board Committees. Clause 9 deals with 'independence of the Board.

Clause 10 deals with the appointment of the Chairperson by the Minister and the roles and responsibilities of the Chairperson. The Chairperson is inter alia responsible for leading the Board, facilitating the effective contribution of all Board members, and promoting constructive and respectful relations between Board members as well as between the Board and management. The Chairperson is responsible for setting the ethical tone for the Board and the entity and provide overall leadership to the Board.

246. Clause 13 of the Charter deals with conflict of interest. Clause 18 of the Charter deals with agenda, meeting papers, and minutes of the Board. It provides in clause 18.3 that 'all meeting papers and submissions made at the Board meeting are strictly confidential and Board members must under no circumstances circulate them to any other parties.'

247. In addition, thereto, is the code of conduct which must also be adhered to. These legal prescripts provide the necessary governance framework within which the Board operates. This legal framework ensures that the Board may do nothing other than that permitted by law.

Analyses and evaluation of evidence

248. Analyses and evaluation of evidence is summarised. This is so because analyses and evaluation of evidence has been conducted above when I considered the evidence we obtained from the interviews and the documents

which corroborate or dispel the oral evidence presented by different persons interviewed.

249. I considered the evidence of Heyneke in relation to the audio recordings and the OUTA report. Heyneke was open and candid in his response. He conceded where he had to concede and maintained his position where he felt his gut feeling was strong.

250. Heyneke also conceded that his report was based solely on him listening to the audio recordings of the meetings and drawing inferences from the conversations between Khosa, Ntumba and Maluleke. He also admitted that he did not interview anybody to corroborate his conclusions. In a civil setting or investigative setting an inference that is to be drawn from the available evidence must be a probable inference. In a criminal law setting an inference that is drawn from available facts or evidence must be the only reasonable inference to the exclusion of all others.

251. In the context within which Heyneke conducted the investigation, he for instance concluded from the report that the appointment of Werksmans was influenced by Ntumba. This inference is drawn from the fact that Ntumba and Maluleke met Khosa on 15 August 2023, whereas the Board resolution for the appointment of a reputable law firm to conduct an investigation was adopted on 14 August 2023. The letter of appointment of Werksmans to conduct an investigation was issued on 18 August 2023. From these sequencing, OUTA concluded in its report that Khosa appointed Werksmans because Ntumba in

the meeting of 15 August 2023 intimated to Khosa that Werksmans be appointed because its report would not be questioned. What Ntumba had in mind was that Werksmans should be told by Khosa to retain a verdict favourable to the CEO and the service providers.

252. OUTA concluded in its report that although Ntumba influenced the appointment of Werksmans, the plan to have a favourable outcome desired by them 'backfired', suggesting that Werksmans did not carry out its side of the bargain thus disappointing Ntumba, Khosa and Maluleke.
253. What OUTA did not have as evidence at the time, which we now have is that Khosa met Ntumba and Maluleke in the evening on 15 August 2023, and that at that time a decision to appoint Werksmans had already been taken by Khosa. This contention is supported by objective facts. For instance, on 14 August 2023, after the Board meeting, Khosa contacted Mr July. On the morning of 15 August 2023, Mr July sent a draft letter of placing the CEO on special leave at 7h59, and Khosa responded by WhatsApp at 9h55 that very same morning.
254. Whilst Mr July could not recall the communication with Khosa of 14 August giving him instructions to that effect, he intimated that he could not have produced the draft he produced that early morning if he did not receive the instruction the previous day. But his inclination is supported by objective evidence of the communication that Mr Khosa showed Mr Tshisevhe, after Mr Tshisevhe had asked Khosa to look for the evidence which support his contention that he communicated with Mr July before his meeting with Mr July.

255. Khosa returned to TGR offices with that proof which he showed to Mr Tshisevhe.
256. The significance of this objective facts, corroborated by Mr July dispels any notion that Ntumba influenced the appointment of Werksmans. The conclusion reached in the OUTA report that Ntumba influenced such appointment is not supported by the facts. It is thus an incorrect conclusion.
257. The other important conclusion reached by OUTA in its report from the recordings is that Ntumba and Maluleke have suggested that Khosa and the Minister received money from service providers. Firstly, it was OUTA's contention that Ntumba and Maluleke were service providers or representatives of the service providers. It is not clear from the report on what basis it was contended that Maluleke is a service provider, because he was neither a director nor shareholder of any of the four service providers. As for Ntumba, he is tied to the service providers by his marriage to Tshegofatso Ntumba, who is a director and shareholder of Coinvest. Or it is contended that by virtue of that marriage he is linked to Coinvest. The objective fact is that Ntumba is neither a director nor shareholder of any of the four service providers. A marriage to a director of an entity that was appointed as a service provider does not without more make him a director or shareholder by extension, nor link him or associate him with the entity.

258. Whilst Ntumba and Maluleke avoided to come for interviews, and for reasons best known to them, what we gather from the evidence, particularly their obsession with the affairs of NSFAS and overly worried about what would be the outcome of the Werksmans investigation, is that Ntumba and Maluleke did have some interest in the continuing employment of the CEO and the continuing execution of the service providers' contracts. What we could not establish is, what did they stand to benefit if the contracts remain extant.
259. The further issue considered by OUTA from the recordings was that Ntumba and Maluleke succeeded in influencing Khosa and by extension the Board not to terminate the contracts of the service providers. What Ntumba and Maluleke spoke about before Khosa arrived during the second meeting was, they would request Khosa to extend the term of the investigation to three to four months. Khosa had given Werksmans a much lesser period, hence the investigation was commenced mid-August and concluded in mid-October.
260. Ntumba and Maluleke had wished that the investigation should take longer so that if the contracts of the service providers were to be terminated, same should not be effected until end of December 2023. What is however glaring from the recordings is that when Khosa arrived, they did not forcefully push that narrative.
261. OUTA concluded that the contracts of the service providers were extended and not terminated as a result of Ntumba's influence to Khosa and the Board. There is no evidence to substantiate this conclusion.

262. What OUTA did not have then, when it prepared the report is what we now have as evidence. OUTA did not have the benefit of the evidence that we have received from the service providers that we have interviewed and did not have the evidence of Board members which we have. In fact, objective evidence shows that there was no influence by Ntumba to Khosa and the Board to extend the contracts of service providers and to not terminate the contracts despite the findings and recommendations of the Werksmans report.
263. In fact, the Board had approached three law firms for advice on how to implement the recommendations regarding the termination of contracts of the service providers without NSFAS incurring potential damages claim, and without prejudicing the students who are beneficiaries of the students' allowances. The conclusion that Khosa and the Board were influenced by Ntumba is not supported by objective facts.
264. A further issue considered by OUTA in its report from the recordings was that Khosa and the Minister received money from the service providers. OUTA has taken this from the conversation that took place between Ntumba and Maluleke during the second meeting prior to the arrival of Khosa. OUTA could not have lend any credence to this talk which was so incoherent and making little sense if at all.
265. Despite that Ntumba was consciously recording, he failed to mention from whom the money was received, and when and how the money was given to Khosa and the Minister. Neither did he say whether the money was in cash or

electronic transfer. The amount received is also not clear from their conversations. There is a mention of a six figure which OUTA attribute it to be a reference to R6 million.

266. OUTA also mentioned in the report that according to Ntumba, the money was received by Khosa from Ms Fatima Habib when Khosa visited London. But Heyneke said during his interview that Ntumba and Maluleke said 'they think Khosa got something when he was in London. OUTA had attributed that to be a reference that Khosa received the money alleged by Ntumba and Maluleke from Ms Fatima Habib in London.

267. Fatima Habib was said to be a director of Fundi, which it is alleged operates in the same education space and offering similar services as those offered by the appointed service providers. But it is said on a similar vein that Fundi did not get the tender despite its several attempts in submitting its bids. As to why Fundi would pay a bribe for a lost tender and no tender after attempting several times baffles the mind.

268. Whilst OUTA had concluded that Khosa and the Minister received a R6 million and R1,5 million respectively from service providers, Heyneke said during the interview that Ntumba and Maluleke said that Khosa and the Minister received this money from London, suggesting that Khosa collected the money from London and shared it with the Minister. But, on the same breath, and in the same conversation, Ntumba and Maluleke said that they were the ones who gave money to Khosa but bemoan the fact that he failed to deliver. They

suspected that he has been managed somewhere hence he was unable to deliver what they wanted, yet he has taken money from them.

269. Whilst OUTA said in its report that Khosa received R1,5 million from the service providers, Ntumba and Maluleke did not say so in the recordings. Heyneke conceded that there is no mention of R1,5 million by Ntumba and Maluleke. And nowhere do they say, the Minister received R6 million.

270. So, on available facts, and on Ntumba and Maluleke's own version, the story of the bribe is simply fictitious and ridiculous, and OUTA ought not to have lend credence to it.

271. What makes it so obvious that it was Ntumba and Maluleke's own creation is that they recorded their own conversation discussing the bribe and how they would besmear Khosa's name and how they would confront him when he arrived. But, when Khosa arrived, none of the allegations they discussed among themselves were put to Khosa. The only logical inference is that Ntumba and Maluleke knew that Khosa would deny the allegations thus rendering their recordings of no use for them.

272. There could have been no any other purpose of Ntumba recording the conversations during these meetings other than that he was looking for a smoking gun that he could use against Khosa. That could only happen if Khosa implicated himself in wrongdoing or criminality in the conversation, but to reach this end, Ntumba the recorder would be the driver of the conversation and state

unequivocal statements which Khosa would confirm as the truth. Ntumba did not do that, instead he relished on bad-mouthing Khosa in his absence and remained supine on contentious issues on Khosa's arrival. At best, he gainfully recorded himself and Maluleke gossiping about Khosa without providing evidence in substantiation of their rhetoric.

273. What makes it plain what the objective of the recording was by Ntumba, is that, although he made these recordings in August 2023, he kept them and only released them anonymously in October 2023, after Werksmans released its damning report on the CEO's role in the irregular appointments of the service providers. OUTA said it received the recordings from a whistleblower in October 2023, but there was only one person in possession of the recordings. Ntumba was in possession of the recordings.

Findings

274. Upon evaluation of the evidence and consideration of relevant prescripts, I make the following findings:
- 274.1 the two audio recordings of the two meetings between Khosa, Ntumba and Maluleke are authentic;
- 274.2 Ntumba recorded the meetings secretly without Khosa's knowledge;
- 274.3 The first meeting was held in the evening of 15 August 2023 at a restaurant at O R Tambo International Airport;

- 274.4 The second meeting was held a week or two after the first meeting at an undisclosed location;
- 274.5 The Board resolution of 14 August 2023 which mandated Khosa in his capacity as chairperson to select a reputable law firm which would conduct an investigation against the CEO and to craft the terms of reference for the investigation was not unlawful;
- 274.6 Khosa communicated with Mr Sandile July, attorney and Director at Werksmans on or about 14 August 2023 pursuant to the resolution of the Board and the Board's decision to place the CEO on special leave pending the outcome of the investigation;
- 274.7 Mr July prepared a draft letter about the CEO's special leave which he sent by WhatsApp to Khosa on 15 August 2023 at 7h59 in the morning, and Khosa responded by WhatsApp on the same day at 9h55 in the morning.
- 274.8 The decision to appoint Werksmans had already been taken by the time Khosa met Ntumba and Maluleke in the evening of 15 August 2023.
- 274.9 The appointment of Werksmans was formalised in a letter dated 18 August 2023 addressed by Khosa to July;
- 274.10 On available evidence, Ntumba played no role in the appointment of Werksmans.

274.11 Ntumba and Maluleke created false impression that they were highly connected to important people with decision making powers in higher places, and that they command enormous influence when in fact they did not;

274.12 Ntumba and Maluleke were neither directors nor shareholders of any of the four companies appointed to provide direct payments system to NSFAS;

274.13 There is no evidence to support any contention that Ntumba and Maluleke were acting as agents or representatives of any of the four companies appointed to provide direct payments system when they met with Khosa in the two meetings mentioned above;

274.14 Ntumba and Maluleke attempted to unduly influence Khosa to interfere with the Werksmans investigation;

274.15 Ntumba and Maluleke did not succeed in putting undue influence on Khosa to interfere with the Werksmans investigation;

274.16 Instead, the Werksmans report made damning findings against the CEO and found the tender awarded to the four service providers to have been irregularly awarded;

274.17 Werksmans' report recommended that the CEO be dismissed with immediate effect, and the contracts with the four service providers be terminated;

274.18 There is no evidence to substantiate the allegation that Khosa met with the service providers several times and discussed the confidential matters of the Board;

274.19 On available evidence, Khosa met with the four service providers once in a formal meeting that was convened by the Board with service providers in the morning on 18 October 2023 in which the Board briefed the service providers about the recommendations of the Werksmans report;

274.20 On the same day, 18 October 2023, Khosa and the Board members briefed the media on the recommendations of the Werksmans report;

274.21 There is no evidence to substantiate the allegation that Khosa has acted outside the Board's resolutions regarding the investigation against the CEO;

274.22 On available evidence Khosa acted promptly by appointing Werksmans and crafted the terms of reference.

274.23 There is no evidence to support the allegation that Khosa contributed to any failure to implement the resolutions of the Werksmans report and subsequent resolutions;

274.24 On available evidence, the Board adopted the findings and recommendations of the Werksmans report in full, and implemented them swiftly, firstly, by terminating the employment contract of the CEO with immediate effect, and secondly by seeking legal opinions on how to implement the recommendation regarding the termination of contracts of the service providers, thirdly, by commencing the process to discipline implicated officials in the Werksmans report;

274.25 I found no evidence which substantiate the allegation that Khosa breached his duties as a non-executive Director and chairperson of the Board;

274.26 there is no evidence to substantiate the allegations that Khosa received money from the service provider(s) or persons linked to the service provider(s) of NSFAS;

274.27 there is no evidence that Khosa and the Minister met with the service providers at the airport let alone with Ntumba as alleged in the audio recordings;

274.28 There is no evidence that Khosa made decisions with service providers, let alone decisions that were contrary to the ongoing Board investigation;

274.29 Although from the recordings Khosa did not discuss confidential Board matters with Ntumba and Maluleke, it was an error of judgment for him to have allowed a discussion involving the Board and Board decisions to take place with them, and for him to participate in such discussions.

Recommendations

275. The Board should expedite the implementation of the remaining recommendations of the Werksmans report and take a decision on how it would implement the termination of the contracts of service providers without prejudice to the beneficiaries of the students' allowances;
276. The Board should be guided by legal opinions from experts in administrative law in order to minimise NSFAS exposure to potential damages claims;
277. The Board should reprimand Khosa for his actions, which is for discussing the Board and Board decisions with Ntumba and Maluleke, and for failing to inform the Board about such discussions.

Prepared By:

A handwritten signature in black ink, appearing to read 'Adv WR Mokhare SC', written over a horizontal line.

Adv WR Mokhare SC

Briefed by
TGR Attorneys

27 March 2024