



OFFICE OF THE MASTER OF THE HIGH COURT PROBLEM STATEMENT AND RECOMMENDATIONS

The Law Society of South Africa (LSSA) constitutes the collective voice of the approximately 31 000 practising attorneys and almost 7 000 candidate attorneys within the Republic. It brings together the Black Lawyers Association, the National Association of Democratic Lawyers and the Independent attorneys, in representing the attorneys' profession.

Introduction:

The LSSA notes with appreciation the Portfolio Committee's engagements with the Chief Master on the state of affairs at the Masters' offices and its oversight visits to some of the Masters' offices.

We are however extremely concerned about the continued ineptitude at the Masters' offices across the country. We have previously attempted to engage with Minister of Justice and Correctional Service (the Minister), the Deputy Minister of Justice and the Chief Master with a view of finding meaningful solutions, with little or no success.

Since March 2020 we have addressed various letters to the Minister requesting a meeting to, amongst other, discuss the untenable situation at the Masters' offices and to explore swift and meaningful intervention to ensure that the rights of vulnerable community members are protected. We attach hereto a copy of the letter addressed to the Minister dated 3 March 2020, a copy of which had also been forwarded to the Deputy Minister and the Chief Master.

We have on occasion engaged in meetings with the then Chief Master, Adv Mafojane, and also his predecessor, Adv Lester Basson, and several Masters and officials.

We have recently requested legal practitioners who are engaging with the Masters' offices to share their experiences and to propose potential solutions.

Context:

The Masters' offices have not been functioning as they should for a number of years and the Covid pandemic and loadshedding have exacerbated the situation.

The pandemic resulted in a dramatic spike in deaths, which had a devastating impact on the South African economy. It caused immense disruptions and anguish and hardship for individuals, families and communities. The Masters' offices are, amongst other, responsible for the registration and supervision of the administration of deceased estates. According to its website, "*The purpose is to ensure an orderly winding up of the financial affairs of the deceased, and the protection of the financial interests of the heirs.*"

The continuous loadshedding adds to the Masters' offices' woes. During this pivotal juncture, the Masters' offices have exhibited a deeply concerning failure in meeting the needs of the South African public. Regrettably, they have been unable to establish a substantial level of trust among both the legal community and the public. Their embedded culture and malfunctioning operations not only hinder progress, but also display a distinct lack of proactive planning and a dearth of urgency.

Immediate attention and corrective measures are imperative to address these critical shortcomings and gain the confidence of stakeholders.

Pages 52 and 53 of the 2021-22 Annual Report of the Department of Justice and Constitutional Development paint a picture of the Masters' offices being firmly on course towards their performance targets. If such a depiction presented an accurate depiction of the reality, our plea to convene an audience with the Portfolio Committee would have been rendered unnecessary. Regrettably, the statistics are in stark contrast to the realities experienced by legal practitioners in their quest to assist members of the public.

Letters of appointment issued in deceased estates within 15 days from receipt of all required documents.					
Audited actual Achieved performance 2019/2020	Audited actual Achieved performance 2020/2021	Planned Annual <u>target</u> 2021/2022	Actual achievement 2021/22 until date of re-tabling 20 Jan 2022	Deviation from planned target to actual achievement for 2021/2022	Target exceeded due to effective monitoring of performance.
90%	75%	75%	77%	3%	
Letters of authority issued in trusts within 14 days from receipt of all required documents.					

Audited actual Achieved performance 2019/2020	Audited actual Achieved performance 2020/2021	Planned Annual <u>target</u> 2021/2022	Actual achievement 2021/22 until date of re-tabling 20 Jan 2022	Deviation from planned target to actual achievement for 2021/2022	Backlogs created by system downtime.
85%	68%	70%	60%	(25%)	

Page 27 of the Report states: *“The Department developed an online registration for deceased estates and trusts during the financial period. The development and implementation of online registrations will be a practical method that will enable individuals to report a deceased estate or register trusts and do it remotely.”* We have already been informed about the planned Trusts Online and the Deceased Online project in 2021, but it appears that this project has not yet been implemented.

Past engagement with the Chief Master:

The LSSA has over the years engaged in several productive dialogues with the Office of the Chief Master, and we genuinely appreciate their willingness to collaborate with stakeholders. During these meetings, the LSSA expressed significant concern regarding the current circumstances within the Masters' offices across the Republic. We have underscored the presence of excessive delays, including prolonged issuance of letters of executorship, unresponsiveness to emails, and unanswered phone calls, among other concerns.

We have impressed upon the Chief Master the need for channels of communication alternative to the South African Post Office. SAPO is the primary medium of communication between the Masters' offices and legal practitioners and the public. The Post Office has become dysfunctional and does not deliver correspondence. The absence of a reliable and efficient channel of communication has devastating consequences for the due and proper administration of estates.

We have on multiple occasions pointed out that legal practitioners have previously contributed to alleviating administrative backlogs and processing delays within state departments, thereby enhancing the administration of justice. Considering this, the LSSA expressed the view that a similar intervention could be pursued within a defined timeframe to alleviate the current backlog. This option has unfortunately not been pursued.

Regrettably, it has become unmistakably apparent that the realisation of effective governance, strategic, and operational changes necessitate more definitive and sweeping institutional transformations, which are beyond the capability and scope of the Chief Master alone.

Key concerns:

These are some of the key concerns, to name but a few:

- a) There appears to be a lack of effective leadership and political will to address the ongoing problems, which affect the lives of ordinary citizens. We believe that the Masters' Office, as a state institution, is in breach of its constitutional obligations.
- b) There is a lack of service delivery by the Masters' offices across the country. It is now taking the Masters' offices, in some cases, more than six months to issue letters of executorship and/or to examine liquidation and distribution accounts. This has adverse economic consequences. The public, including orphans and widows, are unable to access funds which they are entitled to when most needed. This constitutes a clear violation of their human rights.
- c) There appears to be a general reluctance from the staff to perform their duties diligently. Correspondence is not answered, or answered months later. Most Masters' offices do not embrace e-mail correspondence except in exceptional instances. However, when one responds per e-mail, it is often not acknowledged at all, or a "fail" message is returned with notice that the recipient's mailbox is "full" and it becomes practically impossible to make meaningful contact with the official or the department concerned in any way. Other Masters' offices resort to mailing important documents, query sheets, notices or information through the Post Office in the full knowledge that postal delivery is unreliable and often very late. This delays the administration of the estates between three and four months.

Phones are not answered or are not working. The telephone of an official during office hours is almost constantly "busy" without any other option or recourse for a member of the public or entity who is supposed to be assisted or served by such official.
- d) Files are invariably misplaced or lost and cannot be located or retrieved, resulting in the unnecessary exercise of opening duplicate files.
- e) Queues at the Masters' offices are not sufficiently managed.
- f) Trust files are being removed for digitisation without interim measures to address pending matters.
- g) There is insufficient staffing and vacancies are not being filled.
- h) There are allegations of instances where messengers are occasionally expected to provide bribes.
- i) Practitioners dealing with the Durban Office and Cape Town Office are particularly frustrated and feel that there are too many problems to enumerate. Calls are not answered, letters are not responded to, certified copies of documents and endorsements of Powers of Attorney to transfer immovable property get lost in the sea of correspondence that is left in boxes. Practitioners have to follow up over and over again to get any response. These offices are understaffed.

- j) The list of appraisers appointed in terms of the provisions of Section 6 of the Administration of Estates Act is incomplete and outdated and requires urgent review and revision. It is respectfully submitted that the Office of the Chief Master should be directed to provide a comprehensive report in this regard.
- k) From time to time, the Chief Master issues Directives. These Directives are issued with little or no consultation with the attorneys' profession, notwithstanding that the legal profession is one of the biggest stakeholders in the fiduciary industry. The failure of the Office of the Chief Master to consult with the legal profession is untenable, as it is a basic and peremptory requirement in our constitutional dispensation. The Office of the Chief Master should refrain from issuing directives which unlawfully intend to create law, such as Chief Master's Directive No. 2 of 2017 (Trusts: Dealing with Various Trust Matters), which *inter alia* aims to prescribe the requirements for the appointment of independent trustees.
- l) In the vast majority of deceased estates, the Master issues letters of authority in terms of Section 18(3) of the Administration of Estates Act (which is an expedited process when the value of an estate is less than R250 000). There is seemingly no accountability to the Master nor the beneficiaries, of whatever nature, by the person who has been appointed to administer the estate. There is no follow up by the Master whether beneficiaries have been paid or have otherwise received the assets awarded to them or that immovable property has been duly transferred. The persons affected by this unsatisfactory state of affairs are vulnerable members of our society.
- m) The Masters' Office conduct examinations for a person to practice as an insolvency practitioner / liquidator. It is uncertain how, and under what legislation / authority, the Master has been "accredited" to conduct examinations in the practice of insolvency / liquidations. Our enquiries have not been met with a satisfactory response.

Recommendations:

While we are mindful that the Masters' offices experience ongoing challenges with loadshedding and an unstable ICT infrastructure, and that there are limited resources available, we believe that the following recommendations will assist in resolving some of the issues:

1. All Masters' offices must be directed to embrace communication by electronic mail. This would be a meaningful intervention and significantly improve turnaround times for the administration of estates. Legislative changes should be made as soon as possible to facilitate this, where required. The proposed amendments in the Judicial Matters Amendment Bill, 2022 relating to the Administration of Estates Act, No. 16 of 1965 should be reconsidered.

2. The amendments to the Trust Property Control Act, 1988, pursuant to the provisions of the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022, have created additional responsibilities for the Masters' offices, which will require additional capacity. The new provisions will also create hardship for members of the public. The LSSA intends to make representations for an amendment of the Act.
3. In 2022 we were presented with a document on the Master's Turnaround Strategy. The key areas of change were identified as:
 - (a) Stable and reliable IT system to modernise services;
 - (b) Training to enhance management skills, efficiency and customer focus;
 - (c) Legislation changes.

We are pleased with the appointment by the Justice Department of a Deputy Director-General of Information and Communication Technology, to deal with ICT modernisation within the Department, including the Master's Office. We hope for the swift introduction of a modernised system that includes suitable controls to facilitate accountability. A user-friendly modernised system can, in our view, streamline operations, automate processes, ensure transparency and increase accountability in decision-making at the Masters' offices.

Clear timeframes are required for implementation of a modernised system. Without close supervision and decisive consequences, the system may continue to be delayed.

4. All vacant posts need to be filled urgently, including the appointment of a permanent Chief Master.
5. All officials should receive training to enhance efficiency and customer focus.
6. The Portfolio Committee could perhaps prescribe further requirements for annual reporting regarding the performance of targets by the Master's Office, as the Annual Report in this regard does not appear to depict the reality experienced by practitioners.

Regular meetings between members of the organised legal profession and the Masters' offices have played a vital role in addressing administrative challenges faced at provincial offices. Through collective efforts and open discussions, these meetings have provided an opportunity to identify and constructively deal with various issues that hindered the smooth functioning of services at the Masters' offices. By sharing experiences and knowledge,

both parties could develop practical solutions and streamline administrative processes. The resulting reports, provided to the LSSA, enabled better coordination and a more cohesive approach to addressing these challenges. It is suggested that regular meetings be convened between the Portfolio Committee and the organised legal profession to foster continuous dialogue and accountability until such time that there is significant improvement of service delivery at the Masters' offices.