

A SUMMARY OF THE REPORT OF THE EQUAL EDUCATION PANEL APPOINTED TO INVESTIGATE ALLEGATIONS AGAINST TSHEPO MOTSEPE AND ANY NEW EVIDENCE AND/OR ALLEGATIONS AGAINST TSHEPO MOTSEPE THAT EMERGE DURING THE PROCESS OF THE INQUIRY

This document does not contain the views of Equal Education. It is merely a summary of the Panel's report and is not a precise record of the views and opinions expressed by the authors of the report.

INTRODUCTION

1. This document provides a summary of the report of the Panel of Enquiry produced on 18 December 2018. The report is twenty-eight (28) pages long. The Panel comprised of Mercia Andrews, Clare Ballard and Madoda Cuphe¹ (**"the Panel"**).

BACKGROUND

2. The Panel was formally established on 14 May 2018 following a resolution taken by the Equal Education (**"EE"**) National Council (**"NC"**) taken on 12 May 2018. The terms of reference instructed the panel to report on and make recommendations concerning the following:
 - 2.1. *Allegations of harassment, including sexual harassment on the part of EE's former General Secretary, Tshepo Motsepe;*
 - 2.2. *The precise facts, circumstances and process which gave rise to the allegations against Tshepo Motsepe;*
 - 2.3. *Any new evidence or allegations pertaining to Tshepo Motsepe which may come to light in the course of the inquiry;*
 - 2.4. *Whether allegations of harassment against Tshepo Motsepe of sexual harassment are credible;*
 - 2.5. *Whether Tshepo Motsepe has breached the trust of Equal Education, its members and staff and whether his actions might be in breach of EE's Constitution, including but not limited to clauses 8.7.3, 8.7.4 or 8.7.5., policies and procedures, and/or Code of Conduct.*

¹ The bios of the panelists can be found on the EE website.

3. EE published a press release notifying the public of the Panel’s investigation on 14 May with the panelists’ names and contact details. A letter was sent via email to all EE and Equal Education Law Centre (“EELC”) staff on the 3rd of June 2018 requesting anyone with information relevant to the terms of reference to contact the Panel. No responses were received to this letter.
4. The Panel approached (or was approached by) and heard the testimonies of 8 persons, including members of EE’s Senior Management Team (SMT) (namely Ntshadi Mofokeng, Leanne Jansen-Thomas and Yoni Bass), EE staff and then-NC members (namely Doron Isaacs and Yoliswa Dwane). The Panel also heard testimonies from two complainants, whose names are known to the Panel but are omitted in the report in order to respect their confidentiality.
5. Although the terms of reference are broadly stated, the Panel understood its mandate to relate, primarily, to accusations of sexual harassment against Motsepe. The Panel was however also open to receiving information relating to any breaches of the EE Constitution or Code of Conduct by Motsepe.

“Harassment” is unwanted conduct of any nature perpetrated by an individual against another. The unwanted nature of harassment distinguishes it from behaviour that is welcome and mutual. Behaviour becomes harassment if:

- *it is persistent, although a single act of harassment may constitute an offence warranting disciplinary action; and/or*
- *the recipient has made it clear that the behaviour is considered offensive and/or unacceptable; and/or*
- *the perpetrator should have known that the behaviour is regarded as offensive and/or unacceptable.*

.....

A specific form of harassment is sexual harassment which may include unwelcome physical, verbal or non-verbal conduct [the definition then sets out a number of examples not intended to be exhaustive].”

6. The Report is structured as follows:

- 6.1. **Part A** contains a description of the methodology and processes adopted by the Panel.
- 6.2. **Part B** contains the Panel's conclusions in respect of the terms listed in the terms of reference. In coming to the conclusions it did in respect of allegations of sexual harassment, the Panel necessarily considered item 7.4 of the terms of reference².
- 6.3. **Part C** contains some additional observations and recommendations from the panel.

PART A – METHODOLOGY AND PROCESS

Confidentiality and Fairness

7. The adopted processes gave complainants the option of having their identities concealed from Motsepe. The Panel took the position that fairness, in these circumstances, required that a version of events justifying the allegations of sexual harassment be put to Motsepe for the purpose of examination. This, the panel decided, could be done by sending Motsepe a written account of the allegations via the Panel itself and asking that he respond to it. The Panel resolved In-person or face-to-face cross examination would not be necessary.
8. Although the Panel decided that, in principle and in certain limited circumstances³ it may be possible to make findings in the absence of such a step having been taken, the Panel took the position that it would be very unlikely that it would be able to make findings against Motsepe without presenting him with a version to which he could respond.

Dealing with the complainants

9. The Panel met with two complainants. At the beginning of each meeting, the panel informed the complainants of the following:
 - 9.1. That their names would not be disclosed in the report (unless requested to be so by them);

² Item 7.4 is detailed above.

³ These would probably include the existence of real and objective evidence (such as emails, texts etc) accompanied by evidence of a demonstrable fear that disclosing one's identity to the alleged perpetrator would have serious negative consequences for the complainant.

- 9.2. That the Panel was accountable to the National Council, and, accordingly, had no interest in the matter other than fulfilling the objectives of the terms of reference;
- 9.3. That in the event they chose not to disclose their identity to Motsepe, this decision would be respected;
- 9.4. That should they choose to refrain from disclosing their identity to Motsepe it would be unlikely that the Panel would be able to make findings against Motsepe in respect of the allegations made against him by him/her;
- 9.5. That if they chose not to disclose their identity to Motsepe and the Panel was unable to make findings against Motsepe in respect of the allegations made by him/her, that his/her testimony would nevertheless be considered valuable input. This would be on account of the Panel's terms of reference instructing it to go beyond simply making findings of guilt or innocence.
- 9.6. That the hearings would be recorded, but that all recordings would be kept confidential and released only to the attorneys briefed by EE for safekeeping.
- 9.7. The complainants were also told that they were not required to make decisions in respect of confidentiality immediately. The Panel was willing to proceed with the hearing and hear back from them at a later stage regarding their decision in respect of the disclosing of identity to Motsepe.

Timeline of events

10. Several days after their respective hearings the complainants informed the Panel of their decisions about confidentiality. These were accepted without question or comment by the Panel.
11. A draft report was completed and circulated to all parties that appeared before the Panel on 15 October 2018. At the discretion of the Panel, the parties were requested not to share the report with anyone and revert back within comment after seven (7) days.
12. Following requests for extension on the deadline for comments, the Panel received a number of submissions in response to the draft report. The final report is thus a culmination of evidence heard at the hearings and submissions sent in response to the draft report.

13. Issues raised in the submissions made in response to the draft report that, be it for confidentiality reasons or other factors, could not be dealt with in the report will be compiled into a separated document and conveyed to the NC.

Delays

14. The Panel states that there was considerable time lost on account of waiting to be put in touch with the complainants by the SMT. Whilst the Panel understands that there may have been some reluctance to share the details of the complainants without certain assurances of confidentiality, the Panel believes the interests of the complainants could have been better handled had independent representatives outside of EE structures been appointed to handle the interests of complainants immediately after the establishment of the Panel.

15. The Panel states that there was a considerable delay in the finalisation of the report as a result of events that transpired immediately after the release of the draft report for comment. The delays involved, primarily, the presentation of additional information that came to light after the hearings and the second complainant's decision to brief an attorney and challenge the findings of the draft report.

PART B – FINDINGS

Allegations of harassment, including sexual harassment on the part of EE's former General Secretary Tshepo Motsepe

16. The panel heard the evidence of two complainants, both of whom were, at the time, employees of Equal Education. Both of them allege that Motsepe sexually harassed them.

17. The first complainant chose to remain anonymous from Motsepe. The circumstances of her account and her position at EE were such that it was not possible to present a version of her allegations to Motsepe without revealing her identity. The Panel was thus unable to test the veracity of her accounts. Further, given the absence of any documentary evidence to support her account, the Panel was not in position to make any findings against Motsepe in relation to those specific allegations.

18. The Panel acknowledges the difficulty of the decision taken by the first complainant, and fully respects the decision of non-disclosure of her identity to Motsepe. There is an

awareness of the complexities involved in such processes, and in the impunity it may allow for alleged perpetrators of sexual harassment if complainants are obliged to reveal their identities. The Panel intended to be as empathetic as possible to these concerns.

19. The Panel does not believe that it is consistent with principles of natural justice to make findings against Motsepe with regard to specific incidents without allowing him an opportunity to respond. Moreover, a finding of sexual harassment without hearing from the accused would lack fairness, and, in turn, legitimacy. To prevent sexual harassment, a process must be followed where all parties accept the outcome.
20. The Panel believes the best solution to this problem is the establishment of structural mechanisms and an organisational culture that facilitates complainants coming forward without fear of repercussion. This will allow compliance with the principle of hearing from the other side. The first complainant's evidence was considered by the panel in their assessment of the other issues dealt with in this report.
21. The Second Complainant (SC) was willing to disclose her identity to Motsepe. The Panel undertook to not publish her name in its report. SC's account as it pertained to the sexual harassment allegations is as follows⁴:
 - 21.1. SC first met Motsepe when she was working for EE during February 2015. SC encountered Motsepe shortly after her appointment at one of EE's offices. During the course of her tenure over the next year or so Motsepe would visit that office from time to time. It was during these visits that SC encountered Motsepe.
 - 21.2. SC details specific incidents of alleged sexual harassment from Motsepe, which were:
 - 21.2.1. **Unwanted hugs:** Motsepe visited that office during 2015. During this visit SC noticed that Motsepe would hug her in greeting, and these hugs were uncomfortably intimate in that they were very tight and would end with him brushing her back and smiling. Motsepe continued to hug her like this during visits to the office in 2015 and 2016.
 - 21.2.2. **After-hours invitation:** During one of Motsepe's visits in 2016 he invited SC to "come by" after work where he was staying. This invitation was extended to SC personally and made her feel uncomfortable. SC responded he should rather

⁴ For confidentiality reasons, a truncated version of SC's account is presented in the summary. Certain details of her account are redacted in the report to protect SC's confidentiality.

join her and her colleagues who were arranging to get together after work. He declined this offer

21.2.3. Remarks about boyfriend and pregnancy: On several occasions Motsepe made certain remarks about the suitability and/or character of SC's partner that made her feel uncomfortable. During her tenure SC fell pregnant. She believes that this, along with her non-responsiveness to Motsepe's advances, led to him finding fault with her work and a general hostility towards her.

21.2.4. Performance issues: Shortly after SC fell pregnant Motsepe sent someone to "check" on SC's work and assess her performance. During this visit SC was then told by the person sent to assess her performance that Motsepe was unhappy with her work. At no point was SC subjected to any disciplinary process. SC's performance was the subject of a letter from the person sent to check on her to the SMT. SC was hurt by this as no one had raised issues with her performance personally. SC faced unnecessary pressure from her new Manager ("**Manager A**"). SC believes that the stress from her work environment contributed to her going into labour. Upon her return to work SC was suspended after having made a mistake at work. There was no disciplinary hearing. Shortly thereafter Motsepe was suspended.

Motsepe's account

22. Motsepe responded to the allegations before the panel. His account is summarised as follows:

22.1. Motsepe claims to have met SC during an EE conference. Motsepe did not visit that office at the time SC claims that he did. Motsepe and another SMT member visited said office for the purpose of examining "organisational issues". Motsepe encountered SC during a meeting but in the presence of the other SMT member. Encounters he had with her at this stage were in the presence of other people.

22.2. **Regarding unwanted hugs:** Motsepe acknowledges he would hug staff members on occasion as a means of greeting. Motsepe stated that at no point did he single SC out for any intimate hugs. Motsepe stated that he did not touch SC inappropriately during hugs. If his hand brushed SC's back at any point then it was done without intention or accidentally.

22.3. Regarding after-hours invitations: Motsepe visited that office twice during 2016.

During the first trip, he attended meetings in said office all day. At no point does he recall engaging with SC on a one-on-one basis. He dined at the guesthouse in which he was staying. He did not have company and did not invite anyone to join him. On the second trip Motsepe was accompanied by two SMT members. The three of them stayed in the same guesthouse. During this trip they were doing school visits and much of the day was spent on the road. SC did not accompany the staff doing school visits for all of them, and when she did she travelled in a different car to Motsepe. Motsepe maintains that when not on the road evenings were spent with the two fellow SMT Members.

22.4. Regarding remarks about boyfriend and pregnancy: Motsepe stated that he did not know SC's partner and thus did not make any remarks about him. SC's pregnancy did not affect Motsepe's interaction with SC. Motsepe maintains that there had been performance concerns in relation to SC for some time.

22.5. Regarding performance issues: Motsepe does not deny that there were genuine concerns on his part in relation to SC's work performance and explained that it contributed to the decision to post Manager A at said office. He disputes SC's version that suggests that concerns about her raised by him were in retaliation to her disinterest in him. Motsepe had visited said office where he met with Manager A and SC. During this meeting Manager A noted her concerns with SC's performance. Also indicative of SC's poor work performance was the fact that Manager A intercepted a forged invoice created by SC. Motsepe had no direct communication with SC in the weeks leading up to her labour. He was notified of her labour along with other staff members by the HR Officer via a Whatsapp message.

Manager A's account

23. Manager A, at the request of the panel, gave an account of her working relationship with SC and conveyed her observations in respect of Motsepe's treatment of SC and his leadership style. The Panel found the following factors to be helpful in its deliberations:

23.1. Manager A had been frustrated with SC's performance from time to time since her commencement of employment at said office. However, Manager A did notice

that Motsepe, at some point in 2017, became more hostile towards SC. As 2017 progressed there was pressure from him to be tougher on her. She believed that this attitude towards SC could not be entirely justified and, although there had been some concerns around SC's work performance, Motsepe's treatment of SC was disproportionately harsh.

23.2. Manager A told the Panel that she had reported SC's poor performance to the SMT on two occasions, the first involving a failure to act according to instructions and the other concerning SC's construction of a fraudulent invoice.

23.3. Motsepe did send someone to assess SC's performance, and a report detailing this person's findings and recommendations was produced. It was also during this trip that Manager A noticed that Motsepe appeared to be frustrated with SC and "looking for fault" in her work.

23.4. Following this assessment trip a document was requested from SC via email by the person who was sent to assess her performance. SC sent this document. The tone in Motsepe's response to SC is one of annoyance and frustration without sufficient justification given that she was simply completing a task she had been requested to do.

23.5. Manager A explained to the Panel that when she first started working at EE she and Motsepe got on well. However, the relationship changed when she, as a senior employee in the organisation, would question some of his decisions and ideas. His treatment of her became abrupt and he was often rude to her. She told the Panel that Motsepe could be a "bully" within the workplace environment.

23.6. Manager A also observed before the Panel that Motsepe was over-involved in respect of her professional relationship with SC.

23.7. While Manager A did not observe Motsepe sexually harassing SC she had observed him being openly flirtatious with other female colleagues.

Panel's observations and conclusions

24. The Panel found SC to be genuine and earnest in her description of events. Although she as unable to relate the exact dates of the encounters with Motsepe she alleges, the Panel does not find that this diminishes her account in any meaningful way.

25. In his response Motsepe was equally forthright in his recollection of events. Motsepe responded to questions from the Panel without hesitations or obvious attempts to evade the allegations made against him.
26. In order to test and/or corroborate information provided by Motsepe and SC the panel sought testimony from some of the people mentioned in their accounts. While some of the exact dates differ, the number of and reason for Motsepe's visits to the office given by various parties generally correspond with each other.

Panel's finding in re unwanted hugs, invitations and boyfriend comments:

27. Motsepe does not dispute that he would hug staff in greeting from time to time and may have indeed hugged SC. Whether he singled out SC for more intimate hugs is almost impossible to determine in the absence of any additional witness who observed such incidents. Accordingly, the Panel, on a balance of probabilities, concludes that a hug probably did occur and may have been executed in a way that was overly intimate or perceived by SC to have been overly intimate, whether or not he intended it to be so.
28. Similarly, the Panel believes, on a balance of probabilities, that Motsepe did indeed make remarks about the suitability and/or character of SC's partner as well as issue an invitation to SC to join him somewhere after working hours.
29. The Panel finds that Motsepe, as the political leader of a large and influential organisation, should have known that such behaviour was inappropriate, even if, as the evidence suggests, SC did not feel equipped to tell him directly that his behaviour was unwanted and inappropriate. Given his position in the organisation the Panel also considers it largely irrelevant whether or not he intended to convey sexual intentions through these actions.
30. The Panel does not find that his behaviour, albeit inappropriate, was sufficiently persistent in these instances to fall within the definition of sexual harassment.

Panel's finding in re work performance concerns:

31. Motsepe's treatment of SC does, at times, come across as unnecessarily harsh, notwithstanding the fact that concerns over her work performance were not his alone. The Panel is thus satisfied that the accounts describing his increasingly hostile attitude towards her during the course of 2017 are plausible. Given that performance concerns

had been raised by employers other than Motsepe, however, we cannot conclude that his hostility was a result of non-responsiveness to the alleged harassment.

The precise facts, circumstances and process which gave rise to the allegations against Tshepo Motsepe

32. The following is based on information given to the Panel by SMT members, Isaacs and Motsepe.

33. During April 2018 Leanne Jansen-Thomas (Jansen-Thomas) and Rone McFarlane (McFarlane) during a discussion with an EE researcher (“Researcher A”) were informed by Researcher A that there was a rumour circulating amongst staff that Motsepe had offered money to a woman in exchange for refraining from reporting sexual harassment on the part of Luyolo Mazwembe. Similarly, Ntshadi Mofokeng, during a discussion with a former EE employee (“Former Employee”) was informed by Former Employee that, based on what she had heard from fellow EE colleagues, there were “things to be concerned about” in relation to Motsepe. Concerned, Mofokeng spoke to Former Employee again on Wednesday 18 April 2018 and pressed for details. Mofokeng obtained the names of two EE employees from Former Employee who had described her incidents that amounted to sexual harassment by Motsepe.

34. Motsepe shared the information from their respective sources with each other and Yoni Bass, EE’s Chief Financial Officer. Bass, Jansen-Thomas and Mofokeng agreed that it would be appropriate to approach the alleged complainants directly in order to ascertain the truth and credibility of any allegations. Approaching them directly would involve asking the “complainants” whether 1) they had experienced sexual harassment whilst working at EE; and 2) if so, by whom? Before carrying out this decision SMT members decided to reach out to someone superior to them in the organisation for advice. They contacted Doron Isaacs, the then EE Treasurer, on 19 April 2018. Without disclosing the identity of the complainants, Mofokeng and Jansen- Thomas conveyed to Isaacs the nature of the information they had received. Isaacs, although generally supportive of the proposed approach, suggested that the SMT members refer the problem to Yoliswa Dwane, the then Chairperson.

35. When pressed by the Panel for reasons for having refrained from report the information to the Chairperson immediately, the SMT members indicated that they considered Dwane to be somewhat unavailable in that she rarely answered her phone and was often not in the office. They did not consider her to be the most suitable person to approach first.
36. On 21 April 2018, Jansen-Thomas and Mofokeng met with the person (“Person A”) who had reportedly been harassed by Mazwembe. Jansen-Thomas and Mofokeng asked Person A whether he/she had experienced sexual harassment at EE. Person A responded in the affirmative and confirmed that the alleged perpetrator was Mazwembe. Jansen-Thomas and Mofokeng continued by asking whether Person A had been offered a bribe in exchange for silence. Person A denied that this had happened. Mofokeng and Jansen-Thomas were satisfied, then, that there was no truth to the rumour in respect of Motsepe offering money in exchange for an alleged victim not reporting allegations of sexual harassment.
37. Mofokeng and Jansen-Thomas met with the First Complainant (“FC”) on Sunday 22 April 2018. In response to the questions posed by Jansen-Thomas and Mofokeng, FC responded that she had been a victim of sexual harassment and that Motsepe was the perpetrator. FC described Motsepe’s actions to Jansen-Thomas and Mofokeng, who, in turn, were satisfied that such conduct amounted to sexual harassment. Jansen-Thomas and Mofokeng explained to FC that they would give her the opportunity to consider whether to proceed with a formal complaint against Motsepe, noting that FC appeared extremely nervous and fearful. Mofokeng and Jansen-Thomas also explained to her that they had a responsibility to “do something” about what they had heard from her. The following day FC made it known that she did not want to take her complaints forward. Jansen-Thomas and Mofokeng explained to her that they had a responsibility to address the issue, however, because of the harm it had caused her.
38. The next day, Mofokeng and Jansen-Thomas met with SC. She identified Motsepe as the perpetrator of sexual harassment against her.
39. Bass, Mofokeng, Jansen-Thomas and Isaacs met on the evening of 22 April 2018 and resolved that it would be appropriate to put broad allegations to Motsepe directly. Bass, Mofokeng and Jansen-Thomas then resolved to do this the following day. On the morning of Monday 23 April 2018, Bass, Jansen-Thomas and Mofokeng approached EE’s

Deputy General Secretary Ntuthuzo Ndzomo to brief him about what had transpired and requested that he attend the proposed meeting with Motsepe. Ndzomo declined to do so. Jansen-Thomas, Mofokeng and Bass then notified Motsepe that they wished to meet with him at the airport. Shortly before 1pm the SMT members confirmed with Isaacs that they wanted him to be present.

40. Present at the airport meeting on 23 April 2018 were Jansen-Thomas, Bass, Mofokeng, Isaacs and Motsepe. Motsepe was presented with a list of six instances of alleged conduct and asked to respond.
41. Motsepe's response to the allegations – as described to him by the Panel – was one of shock, dismay and denial followed by a statement that he would need to talk to his wife about these allegations before proceeding or deciding anything. He then left the meeting.
42. Motsepe also stressed to the panel that Mofokeng, Bass, Jansen-Thomas and Isaacs urged him to resign.
43. Bass, Jansen-Thomas and Mofokeng describe Motsepe's response slightly differently. Motsepe, devastated by the allegations, stated that he'd never forced himself on a woman, expressed shock that they were referring to multiple women, and stated that he would never have done anything 'like that'. When asked whether any of his actions may have been perceived as sexual harassment he stated that he couldn't imagine that he could ever have made anyone uncomfortable in that way. Motsepe asked the SMT members for guidance on how to proceed. Bass, Jansen-Thomas and Mofokeng advised him that there were two options open to him: 1) write to EE's National Council and request that a process be put in place to investigate the allegations, or 2) resign. They also suggested that Motsepe, who was on leave at the time of the meeting, extend his leave period to take time to figure out what to do. The SMT members believed that there was an understanding that he would not come into the office the following day. Motsepe disputes this understanding.
44. Isaacs' version of what transpired at this meeting also differs from Motsepe's. Motsepe, having been told of the allegations, posed the question to Isaacs and the SMT of whether he should resign. Isaacs responded that this would be Motsepe's decision alone to make. If the allegations were true, then he should probably consider resigning. If not

true then the discomfort and unpleasantness of a full investigation would be worth it in the end.

45. Motsepe, accompanied by his wife, arrived at the office the following day to fetch some of his personal effects. Jansen-Thomas and Bass approached Motsepe while he was in his office packing his things. It is at this stage that Motsepe requested a charge sheet and mentioned that he was unaware of what he had done.
46. Concerned that staff members were witnessing what was becoming a bit of a spectacle, Jansen-Thomas asked Motsepe if he could come and collect his things after hours. Motsepe's wife refused on his behalf. Thereafter, Bass and Jansen-Thomas left Motsepe's office. Before doing so Bass said to Motsepe that they would need to brief staff given that staff members were now aware that something odd and potentially hostile was happening.
47. Jansen-Thomas and Bass call for an urgent staff meeting and explained to staff members that Motsepe was packing up his office on account of serious allegation having been levelled against him. They explained that they would be approaching the NC. Bass then brief the Chairperson on what transpired, writing her a formal letter explaining the process they had taken to investigate the allegations.
48. On 25 April 2018 Motsepe sent a letter of resignation to the Chairperson and the NC. The letter did not contain an admission of guilt.
49. Having received notification of the allegations against Motsepe the NC discussed the matter during the week of 24-30 April 2018 and resolved to establish an independent panel to investigate the allegations against Motsepe. This decision was communicated officially only on 3 May 2018 to Motsepe. On 29 April 2018 Motsepe wrote to the N requesting a process whereby the allegations against him would be tested. On 26 April 2018 SMT members crafted a written statement to be read out to staff to communicate and explain Motsepe's resignation. The same statement was also read to the Social Justice Coalition and the EELC.

Any new evidence or allegations pertaining to Tshepo Motsepe which may come to light in the course of the inquiry

50. The Panel did not receive any evidence or allegations pertaining to Motsepe in response to either the notices posted by EE or the letters sent by the Panel to EE and the EELC. The Panel received information from two complainants and the individuals listed above.

51. What emerged was repeated criticism that Motsepe's conduct, on occasion, amounted to bullying and that he displayed a sexist attitude towards women. The Panel notes the following for the NC: the accounts of the participants in the inquiry indicated that Motsepe flirted inappropriately with younger female employees as well as bullied women in the organisation who may have challenged his decisions. Further, Motsepe carried out such behaviour in a manner that went unchecked by the political leadership.

Whether Tshepo Motsepe has breached the trust of Equal Education, its members and staff and whether his actions might be in breach of EE's Constitution, including but not limited to clauses 8.7.3, 8.7.4., or 8.7.5, policies and procedures, and/or Code of Conduct.

52. The Panel is satisfied that the inappropriate behaviour towards SC amounted to a breach of trust of Equal Education staff and members

53. The Panel cannot conclude, however, that the inappropriate behaviour displayed towards SC amounted to sexual harassment. Nor can it conclude that the conduct described in criticisms of him, though deeply concerning and inappropriate, amounted to any other form of behaviour expressly prohibited by the EE policy.

PART C – ADDITIONAL NOTES AND RECOMMENDATIONS

54. The Panel has identified two issues that it believes require the attention of EE's National Council

Grievance Procedure

55. The Panel examined both complainants' reason for choosing not to proceed in terms of official procedures. The panel considered the following information to be of relevance:

55.1. The members of the SMT were perceived as having close personal friendships with each other and Motsepe

55.2. The complainants, both of whom were junior staff, felt intimidated by Motsepe's charisma, leadership style and status in the organisation.

55.3. The complainants did not feel that their respective stories would be believed on account of their junior status in the organisations and the SMT's personal friendships with Motsepe.

55.4. The complainants did not feel adequately supported at work by the HR office.

- 55.5. The HR Officer was perceived to be personal friends with Motsepe and management members.
- 55.6. One of the complainants was suffering from severe depression and did not feel equipped, emotionally or psychologically, to cope with the stress of coming forward with her grievance.
- 55.7. Both complainants saw the only solution to their experience at work to be to resign.
56. The listed factors were the driving force behind the complainants' reluctance to approach management with complaints of sexual harassment. The fact that junior staff members do not feel safe or supported in coming forward with complaints of sexual harassment indicates that the procedure designed to resolve such complaints is not achieving its intended purpose.
57. The organisational structures designed to protect those who are vulnerable to discrimination and harassment must reflect what we know about power relations as they currently are in society.
58. The Panel is of the opinion that any sexual harassment complaints mechanism that necessarily involves parties intimately connected with day-to-day operations of the complainant being the initial complaint-receivers is not appropriate. The Panel therefore recommends that the EE Policy Manual be amended so as to establish a complaints mechanism that functions semi-independently from its organisational functionaries. An independent process would hopefully allow complainants to come forward without fear of retribution.

Accountability and the procedure followed by the SMT

59. The establishment of this panel was prompted by a process that was not foreseen or prescribed by the EE Policy Manual. There is no doubt that SMT members were motivated by a genuine and sincere concern for the complainants and investigate the claims. It is also clear to the Panel that the only other realistic alternative avenue for the SMT was to immediately hand the complaints to the NC via the Chairperson.
60. The SMT members had understandable reservations about going this route. The first is that the complainants had neither formalised their complaints nor agreed to come forward. Secondly, the NC is somewhat divorced from everyday operational concerns and not in a position to act swiftly or take immediate steps to protect and support

complainants. While there may have been other avenues open to the SMT and the NC to proceed in a way that encouraged the complainants to proceed with formalised grievances, the Panel does not attribute any malignant motives behind the actions of the SMT.

61. While it was not strictly outside the scope of the SMT's functions to investigate the allegations against Motsepe, the Panel is of the opinion that it would have been a more appropriate route for the SMT to approach the Chairperson immediately and have the matter referred to the NC rather than approaching Motsepe themselves.
62. The Panel accepts that the SMT did not expressly pressure Motsepe to resign. However, Panel concludes that the pressure experienced as a result of the airport meeting and the awkward office encounters thereafter led to his resignation. The swift resignation led to a sense of confusion within the office and a pressured attempt to notify donors and partner organisations. This might have been avoided had the SMT referred the matter immediately to those senior to Motsepe.
63. The organisational culture at EE appears to have cemented Motsepe as a leader with enormous power, either real or perceived, that led to distress and discontent among staff members. There seems to be a sense of frustration that this power remained unchecked by the Chairperson and the NC.
64. The Chairperson and by extension the NC were bound to a difficult structural anomaly as the then former Chairperson was a staff member under Motsepe and thus accountable to him in that capacity, whilst he was accountable to her on the National Council. The Panel recommends that EE consider restructuring the relationship between the Chairperson and the General Secretary to ensure proper accountability.