

# Lewis Commission Report

## TABLE OF CONTENTS

A. INTRODUCTION .....	2
B. THE COUNCIL RESOLUTION AND THE TERMS OF REFERENCE .....	4
C. BACKGROUND.....	4
D. THE NEPOTISM POLICY OF SU.....	6
E. THE CONFLICT OF INTEREST POLICY .....	7
F. RECTOR'S DISCRETIONARY PLACEMENTS (RDPS).....	8
G. INTERVIEWS AND EVIDENCE.....	14
H. THE WRITTEN SUBMISSIONS TO THE COMMITTEE.....	38
I. EVALUATION .....	41
J. FINDING .....	43
K. RECOMMENDATIONS.....	45

## **REPORT OF THE STELLENBOSCH UNIVERSITY COUNCIL COMMITTEE CONSTITUTED TO INVESTIGATE THE FACTS UNDERLYING A MOTION TO DISMISS THE RECTOR AND VICE CHANCELLOR, PROFESSOR W DE VILLIERS, ON THE GROUNDS OF SERIOUS MISCONDUCT**

### **A. INTRODUCTION**

[1] On 17 April 2023, a member of the Stellenbosch University (SU) Council and of its Convocation, Dr L Schreiber, proposed to the Council a motion to dismiss the Rector and Vice Chancellor, Professor Wim de Villiers (we shall refer to him as the Rector). Dr Schreiber referred to s 42(3) of the Institutional Statute of the University,<sup>1</sup> which provides that the 'Council may dismiss the Rector from office by a two thirds majority vote of all the members of the Council on the grounds of a serious violation of the law, serious misconduct, or incapacity due to poor work performance or ill health or injury'. The motion was seconded by Mr J Heunis SC, also a member of Council and the then President of the Convocation of SU. Both Dr Schreiber and Mr Heunis spoke in support of the motion, basing the reason for the dismissal on two incidents where the Rector had used a discretionary power vested in him to admit two nephews of his wife, [REDACTED] and [REDACTED], in the Faculty of Medicine and Health Sciences (FMHS) in the MBChB programme (medicine) at SU.

[2] The first incident took place in 2021, and the second towards the end of 2022. Both nephews had applied in the ordinary course for admission to the medical degree in the FMHS but had not been successful because their matric averages, although very high, were beneath the cut off point for admission. The process and criteria for admission to medicine will be elaborated on later in this report. For the moment suffice it to say that when [REDACTED] applied initially, in his matric year, he was advised to register for an undergraduate science degree and to apply again once he had completed the degree. He was advised by the Faculty Office to apply for a 'Rector's Discretionary Placement' (RDP), which he did after finishing his BSc, and the Rector advised the FMHS to admit him to medicine. (We shall refer to the RDPs later in this

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<sup>1</sup> The Statute was gazetted on 16 August 2019. Government Notice 1062 in *Government Gazette* 42636 of 16 August 2019.

report, as the practice has existed for many decades at SU, and the existence of the discretion has given rise to the furore at SU in the matter now being investigated.)

[3] The second incident occurred in October 2022. [REDACTED] application to be admitted to the MBChB, starting in 2023, was unsuccessful. We assume that he was aware of the route that had been taken by his older brother and applied for a special placement by the Rector directly. On receiving this application, the Rector contacted the Registrar, Dr Ronel Retief, and asked what his discretionary power entailed – or what the limits to the discretion were. She advised that the discretion was very wide. Accordingly, the Rector exercised the discretion to admit [REDACTED] to the MBChB programme. We shall deal with his evidence in more detail later. It should be noted now, however, that the Rector had considerable experience in admitting students to medical programmes when working at a university in the United States, and his view was that [REDACTED] was a good applicant with a strong academic record. His school marks were better than those of his older brother [REDACTED], and the Rector considered him to be a good candidate for the MBChB.

[4] [REDACTED] was advised by the Faculty office that his application had been successful. Coincidentally, he had been at school in Wellington for his entire school career with Ms [REDACTED]. She had a better academic school record than [REDACTED] did, and when her application to medicine was unsuccessful (again because she fell below the cut-off point for admission), she was upset that [REDACTED] had been allocated a place when she had not been. She started making enquiries as to the whole admissions process, and eventually ascertained from Dr Retief that [REDACTED] had been admitted under an RDP, even though her academic record had been better throughout their school years. It was her enquiries, followed by her parents' enquiries, that resulted in the disclosure that [REDACTED] had been admitted through a special route. She was subsequently accepted into the University of Pretoria's MBChB course. [REDACTED] admission at SU was retracted, and he had to resort to registering for an undergraduate science degree instead.

[5] In some manner, unknown to us, the media's attention was drawn to the fact that [REDACTED] had been given preferential treatment. And the parents of [REDACTED]

complained to Mr Heunis SC and Dr Schreiber about the process. Hence, the motion to dismiss the Rector arose.

[6] After lengthy deliberation about the motion to dismiss the Rector, the Council decided to appoint a Committee of three people to investigate the allegations of nepotism and misconduct on the part of the Rector. The three members appointed are retired Justice Carole Lewis, and two members of the Council who are not on the staff of SU – Ms Helena Conradie and Ms Ziyanda Stuurman.

## B. THE COUNCIL RESOLUTION AND THE TERMS OF REFERENCE

[7] The relevant provisions of the Terms of Reference for the Committee are set out below. The introductory paragraph is covered in the description of the background above.<sup>2</sup>

### ‘RESOLUTION

Following extensive discussion, and pursuant to the provisions of clause 10(5)(a) of the Statute read with rule 56(4) of the University’s General rules about the procedure for meetings, at its 17 April meeting Council resolved:

to constitute a Council Committee (“**the Committee**”) composed of three persons, to investigate the facts underlying the Motion and the explanation for the Motion, including allegations of nepotism and possible breach of related rules in relation to two known discretionary placements and any other possible discretionary placements of persons related to the Rector, and to report to Council in order to assist Council in its consideration of the Motion;

that the Committee be chaired by a senior independent legal professional; and that the Council will consider the Committee’s report as soon as possible after it has been received.’

## C. BACKGROUND

Academic admissions to the University are governed by the University’s Admissions Policy (“**the Admissions Policy**”) and faculty-specific admission/selection guidelines

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<sup>2</sup> The numbering of the paragraphs in the terms of reference have changed because of some omissions.

that are made available annually on the University's webpage for prospective students.<sup>3</sup>

Paragraph 7.4.9 of the Admissions Policy provides that "*The Rector, after consultation with the deans, may in his or her discretion also request admission for students to a mainstream or EDP [Extended Degree Programme] according to individual circumstances regarding each case.*"

The Rector's academic discretionary placements are guided by the University's Guidelines: Rector's Discretionary Placement.<sup>4</sup> Similar provisions exist for discretionary placements in residences.

The University's Policy for the Prevention of Nepotism<sup>5</sup> ("**the Nepotism Policy**") aims to prevent preferential treatment, as well as situations that may result in conflicts of interests. The University's Policy on Conflict of Interest<sup>6</sup> ("**the Conflict of Interest Policy**") provides a framework for disclosing and managing conflicts of interest in the University. The purpose of this policy is to uphold the credibility and integrity of the University and its members by avoiding or mitigating real or perceived conflicts of interest, amongst them conflict that may arise as a result of relationship interest.

The allegations of nepotism against the Rector originate from two discretionary academic placements made by him under paragraph 7.4.8 [should be 7.4.9] of the Admissions Policy. These placements were made in 2021 and 2022 for relatives of his wife. The placement made in 2022 was retracted the same month that it was made. This student is now studying a different course at the University. The student placed in 2021 started his course in 2022 and is still studying that course.

. . . .

The two Council members of the Committee shall be entitled to participate in the discussion of the Committee's report at Council and to vote on any Motion pursuant thereto.'

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<sup>3</sup> Approved by the Council on 11 February 2017 and implemented with effect from 1 March 2017.

<sup>4</sup> Adopted in 2018.

<sup>5</sup> Originally implemented in January 2000 and revised for the last time in 2015.

<sup>6</sup> Approved in 2012 and implemented with effect from 1 January 2013.

[8] The terms of reference also determined how the Committee should proceed, and gave it powers to interview anyone concerned.<sup>7</sup> Interviews started on 16 May and continued on 17 May. One interview was 'virtual' but the rest in person. Those conducted on 16 and 17 May were in Stellenbosch at the Stellenbosch Institute for Advances Study. On 19 May the Committee interviewed the Rector in the offices of Van der Spuy Attorneys in Cape Town. Van der Spuy Attorneys (and in particular Mr Yaseen Cariem) were appointed by the Council as the Secretariat for the Committee. All interviews were recorded and transcribed. We shall deal in detail with all the interviews in due course. In addition, we called for written submissions and received several of relevance. The list of the documents submitted will be set out at the end of the report. Not all the submissions were relevant to the investigation.

[9] The movers of the notice of motion to dismiss the Rector referred in particular to two policies of SU: 'The Policy for the Prevention of Nepotism' implemented initially in 2000, and the 'Conflict of Interest' policy approved in 2012. Each argued at the Council meeting and before us in their interviews with the Committee that the Rector had breached both policies and that his breaches amounted to misconduct. That was an argument made also in some submissions before us. It is therefore necessary to deal with each policy in turn.

#### **D. THE NEPOTISM POLICY OF SU**

[10] The aim of this policy is to 'prevent unfair preferential treatment, as well as situations that may result in conflicts of interest'. It follows upon an 'Employment Equity Plan' adopted in 2000. 'Nepotism' is defined as 'the unfair preferential treatment of members of a person's close family, household or group of friends' as defined. The tenor of the policy is to prevent family from being appointed by SU staff to staff positions, and to prevent procurement from family members or those defined in the policy. The admission of students to any faculty or programme is not expressly covered by any provisions of the policy. But clause 10 of the policy states that 'Obviously, this policy cannot conceivably provide a complete list of the specific situations in which

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<sup>7</sup> The schedule of interviews is set out in Addendum A to this report.

nepotism could play a role. Where such situations arise, the principles that informed' the provisions of the policy must apply.

[11] Those in favour of the Rector's dismissal for misconduct hang their argument on clause 10 of the nepotism policy. It is, however, not necessary to decide whether the Rector was guilty of nepotism in the placement of his nephews in terms of this policy alone. The problem for the argument is that there are other policies and practices in place at SU that appear to override it. And it is not necessary to rely on the policy – one can simply find that the prohibition on unfair discrimination in the Constitution would prevent the preferential treatment of members, or friends, of a family that results in unfair treatment. We refer in particular to ss 9 (Equality) and 10 (Human Dignity) of the Constitution that would prevent unfair discrimination in favour of any individual.

#### E. THE CONFLICT OF INTEREST POLICY

[12] The other policy on which the advocates for dismissal of the Rector rely is the 'Conflict of Interest Policy' approved by the Council in 2012. It states that SU recognises that 'its members have diverse interests and are involved in activities that fall outside of scope of their formal relationship (as employees or students) with the University. The University further recognizes that such interests may give rise to conflicts of interest, in that they could unfairly or improperly benefit the members, third parties or the University, and in so doing could call the integrity and objectivity of the University and/or its members into question, or have another adverse effect.'

[13] A conflict of interest is defined as 'any situation in which a member has an actual or potential interest that may impact negatively on the integrity or objectivity of the University, thereby causing prejudice to the University or undue or improper benefit to the individual . . .'. A 'relationship interest' is included in the definition of 'Interest'. Clause 3.6 of the Policy provides that a 'Relationship interest' 'includes a family member (spouse, parents, children or relative), a partner, a close personal friend and *any other person with whom the member has a relationship which is likely to appear to a reasonable person to influence his/her objectivity*' (our emphasis).

[14] Clause 7 provides that 'When considering whether a conflict of interest may exist, the question should be asked whether there is a reasonable presumption that the interest has the capacity to influence the member from acting other than in the interests of the University.' The Policy sets out, in an annexure, examples of activities that may constitute potential or actual conflicts of interest: the list is not exhaustive. But the Policy does state 'A guiding rule to apply "when in doubt disclose."' It is important to note at this stage that the Rector disclosed the fact of his relationship to both of his wife's nephews to the Registrar, Dr Ronel Retief, before allocating places to them in the MBChB programme. It was her view that he had an unlimited discretion to do so, and she advised him of that. The wisdom of that advice is a matter to be discussed later.

[15] A reading of the policy on conflict of interests as a whole leaves one with the impression that it applies primarily to members of staff in doing private work or in procuring goods and services. But there can be little doubt that the allocation of a place to a relative who applies to an academic programme, which has very restricted numbers and considerable competition for places, appears to the reasonable person to be preferential treatment. Whether it adversely affects the University or any part of it, or whether it is not in the interests of the University, is another matter.

#### F. RECTOR'S DISCRETIONARY PLACEMENTS (RDPs)

[16] We ascertained through various interviews and from documents submitted that there is, at SU, a very long tradition that the Rector has a discretion to place students in academic programmes, and in residences. Although the practices of RDPs have for a long time been implemented, not all academic staff or support staff are aware of the processes. We were under the impression before studying documents, and even after interviewing the Dean of the Faculty of Medicine and Health Sciences (FMHS) Professor E Muller, and the Registrar, Dr R Retief, that placements by the Rector could be made only in exceptional circumstances and after discussion with the Dean in question. We could not understand what exceptional circumstances had existed in so far as the [REDACTED] brothers were concerned, and the Rector did not discuss the placement of [REDACTED] with the current Dean.

[17] It transpired from the interviews with Professor Muller and Ms F Fredericks, the Deputy Registrar of FMHS, that for some time the procedures for such placements and their existence had been problematic for that Faculty: there were many more applications than places in the MBChB degree. The maximum number of places for the first year of the degree is 300. The number of applicants sometimes exceeds 30 000. We shall deal with the admissions process when discussing the interviews with the Dean, the Registrar and Ms Fredericks. Suffice it to say for now that it is a mechanical process based purely on school marks (and taking into account factors such as race and socio-economic backgrounds), and the cut-off point for admission in later years has required an average mark (grade) of over 90%.

[18] The Guidelines for the Selection of MBChB students referred to RDPs as follows: ‘Two places at the most are reserved for applicants who are admitted at the request of the Rector on account of extraordinary considerations (as determined by the Rector him/herself).’<sup>8</sup> This provision was removed from the guidelines in 2022 to align with the admissions criteria of other faculties which made no mention of RDPs. The general Admissions Policy of SU, adopted in 2017, contained the only reference to RDPs that otherwise existed. Clause 7.4.9 stated ‘The Rector, after consultation with the deans, may in his or her discretion also request admission for students to a mainstream or EDP [extended degree programme] according to individual circumstances regarding each case.’

[19] Various faculty staff, who found the RDPs confusing, pushed for some guidelines that would regulate RDPs. A task team with representatives of every faculty drafted guidelines for the processes, and adopted maximum numbers for each faculty and degree programme. These guidelines, for use by Faculty Administrators/Selection Officers, and not for the general public, were approved by the Senate and Council in September 2018. The guidelines are set out in full below. Any emphasis added is our own.

[20] **‘RECTOR’S DISCRETIONARY PLACEMENTS  
GUIDELINES FOR FACULTY ADMINISTRATORS/SELECTION OFFICERS**

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<sup>8</sup> Provided by a document submitted to the Committee by the Registrar.

*This is not an admission route for those who have failed to achieve University entrance and should therefore not be advertised or promoted as such.*

Faculty administrators/selection officers/academic staff may advise an applicant to make a submission to the Rector should there be special considerations for the Rector to consider.

The Rector may at his/her discretion consider ad hoc requests for RDPs that reach the Rector's office via other channels than the proposed route below.

*The Rector may at his/her discretion and under highly exceptional circumstances as defined by him-/herself, and after consultation with the relevant faculty, waive any of the criteria listed below.*

The Registrar will support the Rector with regard to RDPs, and in turn will be supported by the faculty administrators/selection officers in the Registrar's Division.

#### Criteria

Applicants must have applied for the desired programme via [www.maties.com](http://www.maties.com) first before the closing date for applications

Applicants must meet the minimum admission requirements of the programme within the faculty they're applying for.

Applicants must fulfil other application requirements of the specific programme (e.g. NBT tests/non-academic merit form submission, etc)

Applicants must provide a motivation for Rector's Discretionary Placement (unless a motivation by a third party is deemed sufficient by the Rector)

Successful candidates with Rector's Discretionary Placement, must register in the year for which admission has been granted – a place cannot be carried over to the next academic year.

#### Submission process

*The guidelines and cover page (Addendum A) for RDP submissions may only be obtained from faculty administrators/selection staff – it is not made available on the web or at the Client Services Centre on request.*

The cover page must be submitted together with the supporting documentation to the relevant faculty administrator/selection officer

Submissions for Rector's Discretionary Placements **must** be accompanied by a motivational letter (see Addendum A)

Supporting documentation such as reference reports/testimonials may be included (maximum two reports). Original documents should not be submitted, certified copies only.

Submissions for Rector's Discretionary Placements received before 31 October prior to the year of enrolment should be collated by the faculty officer/selection officer and attached to the summary page (Addendum B) in the following manner:

Complete the summary line of every applicant in full

Attach the cover page, application card ("wit kaart"), motivation, and supporting documents for every student in the order that their names appear on the summary page.

Submit the package neatly bundled, or in the case of many (10+) submissions, in bound format, to the Registrar during the first week of November

Submissions received after this date will only be considered if there are still Rector's Discretionary places available at that stage. They may be made available to the Registrar on an ad hoc basis via e-mail or in hard-copy format.

The Rector may at his/her discretion consider ad hoc requests for Rector's Discretionary Placements – in these cases the Registrar will liaise with the relevant faculty administrator/selection officer.

#### Enquiries

Enquiries with respect to the **submission process** may be addressed to the relevant faculty administrator or selection officer. **No staff member should assist with content or context of the motivation submitted.**

#### Outcome

The decision taken by the Rector is final.

The relevant faculty administrator will communicate to all candidates regarding the outcome before the end of November of the application year, unless a submission was considered much earlier or at a later stage.

#### Record keeping

The outcomes must be recorded per faculty on the summary page

Faculty administrators/selection officers must keep track of the number of RDPs per faculty, so as to advise on the availability of places at any given time.

The number of places allocated per faculty is provided in Addendum C'

which is set out below. Addendum B set out the processes to be followed by Faculties in sending applications to the Registrar for the Rector to consider. It stated that:

‘limited places are reserved for applicants who meet the minimum admission requirements (see programme specific selection guidelines at [www.maties.com](http://www.maties.com)), and are admitted at the discretion of the Rector on account of special considerations.

The motivational letter is a personal statement in which the applicant explains why they wish to study at Stellenbosch University and follow their particular programme of choice, and, more specifically, why they should be considered for a Rector’s Discretionary Placement.

The motivational letter should be attached to this cover page and written in English or Afrikaans, with a maximum of 1500 words in Arial 12 font and 1.5 spacing; and must be submitted to the faculty administrator or selection officer by 31 October.

The consideration process normally takes place in the course of November and applicants will be informed of the outcome as soon as feedback has been received.’

‘Addendum C

‘STELLENBOSCH UNIVERSITY

Rector’s Discretionary Placements per Faculty

<b>Faculty</b>	<b>Target first-year intake for 2019</b>	<b>Intake range</b>	<b>Proposal aligned to 2019 intake ranges</b>	<b>Comments for implementation - 2018/2019</b>
AgriSciences	390	100<400	4	Accepted by Faculty
Arts and Social Sciences	910	>700	10	Accepted by Faculty
Economic and Management Sciences	1500	>700	10	Accepted by Faculty with following exclusions: BCom (International Business) BCom (Man Sciences) EDP.
Education	260	100<400	4	Accepted by Faculty

Engineering	800	>700	10	Faculty proposes 5 places Rector to liaise with Engineering on possible placements
Law	460	400<700	6 – 8	Faculty proposes 5 places: LLB 4j – 1 BA Law – 1 BCom Law – 1 BAcc LLB – 1 (BCom Law and BAcc LLB could be exchangeable) LLB 3j - 1

Faculty	Target first-year intake for 2019	Intake range	Proposal aligned to 2019 intake ranges	Comments for implementation to 2018/2019
Medicine And Health Sciences	460	400<700	8 3 MB,ChB; 2 Physio; 1 each (OT, Dietetics, Speech and Nursing)	Accepted for 2020 and thereafter. For 2019 still as published: MB,ChB – 2 Physio – 2 OT – 2 Nursing - 2 Dietetics – 1 Speech - 1
Science	680	400<700	6-8	Accepted by Faculty Consider reserving some places for January of the following year
Theology	100	<100	2	

Principles:

- Rector's discretionary placements do not exceed 10, even in faculties with the largest first-year intakes
- $<100 = 2$
- $100 < 400 = 4$
- $400 < 700 = 6 - 8$
- $>700 = 10$

5 Sep 2018'

[21] A careful reading of the guidelines does not suggest that each applicant must show exceptional circumstances. The only reference to 'exceptional circumstances' is in bullet point 4 of the guidelines: this states that the Rector may 'waive any of the criteria' for admission in exceptional circumstances. He did not need to do this in the case of either of the [REDACTED] brothers since they met all the admission criteria for the MBChB. And the fact that neither of them purported to be an exceptional case is accordingly irrelevant. Moreover, the fact that the Dean of the Faculty was not consulted is also irrelevant to the question whether the Rector was guilty of any misconduct. The consistent evidence of Dr Retief and Ms Fredericks was that there had never been any consultation about individual applicants with the Dean. The only matter about which the Deans were consulted is the number of places that the Rector could fill for each degree. We shall evaluate these guidelines and practices after considering all the relevant evidence.

## G. INTERVIEWS AND EVIDENCE<sup>9</sup>

[22] We shall deal first with the evidence of Dr Ronel Retief, the University Registrar.

*Dr Retief*

Dr Retief has a long record of working at SU. She was appointed as an Assistant Registrar in charge of student administration in FMHS, which operates on the

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<sup>9</sup> The dates and times of the interviews are set out in addendum A.

Tygerberg Campus, in 2003. At that stage, different Rectors had made many discretionary placements, but the earliest record of one in FMHS that she could find dated to 2001. The Dean of FMHS at that time would have nothing to do with the RDPs as the admissions process was already complex and contentious. At that stage there were many more applications for the MBChB than they had places, given staff resources, laboratory equipment and the other educational tools required.

[23] The Selection Guidelines for Admission to the FMHS referred, until 2022, to the RDPs. This is set out above. The reference was removed, however, when the guidelines were drafted for all faculties: this was to ensure consistency between faculties.

[24] The practice of referring applications to the Rector remained that the Faculty staff would, on the application of a student, send all applications to the Registrar's office. Applicants were not generally advised about this route. And the guidelines remained for the use of faculty administrators. They were not advertised and the website of SU made and makes no mention of them. In a number of cases where students applied to register for the MBChB, and were unsuccessful, they might be advised to apply for a discretionary placement. In the normal course, however, they would be advised to write further exams (National Benchmark Tests), or to register for an undergraduate science degree. [REDACTED], when he enquired why his first application to register for the MBChB was unsuccessful, was so advised. After completing his BSc he reapplied for the MBChB (in a different category because he was then a postgraduate) and was advised to apply for an RDP – which he did. At the time when his documents were sent to the Registrar's office, Dr Retief knew that he was the Rector's nephew, but believed that there was no limit to his discretion.

[25] Dr Retief left the Tygerberg campus towards the end of 2016, becoming the Registrar Designate of SU, and then the Registrar in 2017. In early 2018, the issue of RDPs was discussed at a forum for the Rectorate and Deans (RDF) where a proposal was made that the process of applying for an RDP should be formalized across faculties. A task team was set up to draft guidelines that would operate across all faculties. Each faculty had a representative on the task team. The process in the FMHS was taken as a basis, but the team added a further route: an applicant could

make an ad hoc application to the Rector, but the documents in support of the application were limited. The RDF agreed the number of placements in each academic programme. The number eventually settled for the MBChB was three, and there were limitations for other degrees within the Faculty, as there were in other Faculties. The deans thus played a role in determining the placement numbers, but were not consulted about individual placements unless they wished to be involved.

[26] Once the guidelines were approved by the Executive Committee of Senate (the Rectorate and all the deans) they were implemented from 2018 for the 2019 admissions onwards. [REDACTED] application for an RDP was sent with all the other such applications by the FMHS to the Registrar's office. [REDACTED], on the other hand, when learning that his application to register for the MBChB in 2022 was unsuccessful, took the 'ad hoc' route provided for in the guidelines. He wrote an email directly to the Rector, requesting a special placement. The natural inference to be drawn from this is that he was aware of this route as a result of his older brother's placement. The Rector phoned Dr Retief to ask about the limits of his discretion. She read to him from the guidelines and advised that there were very few limits to his discretion. The Rector emailed Dr Retief on 4 October 2022, advising that he had exercised his discretion in favour of [REDACTED] she relayed it to the FMHS office the following day and [REDACTED] was advised that he had been awarded a place in the MBChB degree for 2023.

[27] Dr Retief stated that on 12 October 2022, [REDACTED] had enquired why her application for the MBChB had been unsuccessful. She had discovered that a classmate, despite his lower marks throughout their school years, had been accepted. She wanted an explanation as to why this had happened. The Faculty Office explained to her that they could not give information about any other applicant without permission because of the provisions of the Protection of Private Information Act (POPIA). This was a routine response from the Faculty. [REDACTED] responded that she knew that [REDACTED] had been admitted. The office contacted Dr Retief who advised the Selection Office to ask [REDACTED] to divulge the information about his discretionary placement. She asked the Rector to give that permission which he did. Ms Fredericks, the Deputy Registrar of FMHS, wrote to [REDACTED] explaining that she had been required to obtain permission from [REDACTED] to divulge his name. She also stated that

when the final matric marks were published in 2023, [REDACTED] application would be reassessed. In the event, [REDACTED] final marks were better than those of [REDACTED]. Nothing turns on that.

[28] Mr [REDACTED], the father of [REDACTED] [REDACTED], responded to the Faculty letter by questioning the RDP process: he included a photograph of the Rector and the [REDACTED] brothers participating in the 2018 Cape Cycle race, to raise funds for SU, with circles around their heads and followed by the caption 'We now completely understand the Rector's Discretionary Placement'.

[29] This letter also reached the Dean of FMSC, Professor E Muller, who had already expressed discomfort about RDPs in faculty meetings. She telephoned the Chief Operating Officer of SU, who was responsible for risks to the University, Professor Stanley du Plessis. (We shall refer in more detail to Professors Muller's and Du Plessis's interviews.) Professor du Plessis had then phoned Dr Retief and they discussed the risk to the Rector and the University arising from exercising a discretion in respect of his nephew [REDACTED]. They believed it best to withdraw [REDACTED] placement. Dr Retief then contacted the Rector and advised him to withdraw the placement of [REDACTED], which he did on the same day – 30 October 2022. At that time, Dr Retief did not recall the discretionary placement of [REDACTED], and Professor du Plessis did not ever know about it.

[30] Dr Retief informed the [REDACTED] that evening that [REDACTED] placement had been withdrawn. Mr [REDACTED] stated that they had not intended to deprive [REDACTED] of a place in the MBChB, but had merely made enquiries as to why [REDACTED] had not been admitted to the degree. The process had been unfair, he said. The [REDACTED] made an appointment to see Dr Retief in November 2022. She thought that the meeting had gone well and that they had understood the position.

[31] The [REDACTED] parents and [REDACTED] also requested a meeting with Dr Retief. They were distressed that [REDACTED] placement had been withdrawn. She advised that it had been necessary to protect the Rector's integrity and that of SU. [REDACTED] subsequently was admitted to a BSc and enrolled in 2023.

[32] Dr Retief explained to the Committee that Council had already decided that a new process was required for making discretionary placements, and that her view was that there should be a committee in each Faculty which would sit with the Rector and make decisions, save where there was a conflict of interest in respect of any of them.

[33] We shall deal next with the evidence of the Deputy Registrar of FMHS because she has had considerable experience of selection in the Faculty and it was she who finally dealt with [REDACTED] enquiries as to why [REDACTED] had been admitted to the MBChB and she had not.

*Ms Farah Fredericks*

Ms Fredericks has worked in the FMHS since 2013, and became the Deputy Registrar when Dr Retief left the Faculty in 2016. She is in charge of student admissions in FMHS and explained the evolution of the RDP guidelines in the same terms as did Dr Retief. She said that the possibility of an RDP was not generally known and that the guidelines were strictly for faculty administrators. An applicant for a place in the FMHS might be referred to the Rector in exceptional circumstances, such as trauma during school, particularly in the matric year. She had referred a couple of applicants to the Rector, one a young woman who wished to study dietetics but had submitted the wrong application before the deadline, and one who was an exceptional athlete.

[34] The only step she had taken in respect of [REDACTED] enquiries was to advise her of the placement of another applicant by the Rector, but said she could not disclose his identity because of the provisions of POPIA. She asked for permission from the Rector to contact [REDACTED] and get his consent to disclosure but the Rector advised that it was in order for her to do so. She accordingly did. Ms Fredericks was firmly of the view that there was a need for discretion to be exercised for some applicants, but that it should not vest in one person alone. She suggested a committee of three people who would go through a transparent process in making any decision in any faculty.

[35] Ms Fredericks' view was that the Rector had made an error of judgement in using his discretion to place his two nephews. She said that the perception might have been created that the Rector, as a white man, was favouring white family members

and discriminating against other worthy applicants. She accepted that the Rector had throughout his tenure pushed strongly for transformation and diversity, and regretted the perception that had been created by what she termed his 'lapse in judgement'.

*Dr Fish*

[36] Dr Fish is a Vice Dean in FMHS and has been for some 18 years. Her portfolio is Clinical Services and Social Impact. She serves on a committee that advises the Faculty Board, Senate and Council on strategic direction. She has considerable experience in ensuring that demographic and socio-economic factors play a role in the selection of students in the faculty, working with the previous Dean, Professor Jimmy Volmink, on improving the selection of students classified as 'Black, Coloured, Indian and Asian', and of those with social and economic disadvantage in their background.

[37] It was Dr Fish's view that the criteria that take race and social and economic disadvantage into account in the selection process were sufficient to enable a full transformation of SU. Although only 300 students are admitted to the MBChB each year, a limited number of places were allocated to the top matric achievers. But even admitting students of all racial groups, and with disadvantaged backgrounds, resulted in the admission of high achievers. The minimum average mark at school even from these groups was some 84 – 86%. Dr Fish believes that there should be no discretionary placements made at all. They are not necessary and lead to confusion and complexity. No one person should be able to take a decision on an individual student.

[38] The Rector himself had phoned Dr Fish on the Friday evening before the story about the placement of ██████ was published in the media, to give her an indication of what was happening. She assumed he had phoned her because she had been involved in selection processes in FMHS for a long time, was a member of the Senate and of the Council and had repeatedly questioned the need for discretionary placements. When the Rectorate had tried to push the Faculty, some time in 2021, to agreeing to accept five placements, instead of three, she, amongst others, had opposed it. She was taken aback by the Rector's decision: she and others has worked hard to transform the Faculty and she thought it wrong that the Rector could just find a place for his wife's nephew. She was all the more shocked when she discovered the

following week that [REDACTED] had been given a place under the discretion the year before then. She thought that the Rector should have advised her and the Faculty that this had happened when he disclosed the placement of [REDACTED]. She was deeply disappointed and felt that there was a trust deficit as a result: a serious breach in trust.

[39] Dr Fish believed, however, that the way Convocation members had behaved at the Council meeting on 17 April 2023 was unacceptable. They were trying to demonize the Rector for their own ends. But she thought, nonetheless, that the Rector had to be accountable for his conduct and that he ought to apologise to those whom he had misled, and to show remorse.

*Professor Elmi Muller*

[40] Professor Muller is the Dean of FMHS and was the first person to be interviewed by the Committee. She also handed in a statement in which she expressed her views. She was appointed as Dean Designate (shadowing the former Dean, Professor Jimmy Volmink) towards the end of 2021, and took office as the Dean at the beginning of 2022. Her prior academic experience had been in the UK and at UCT, where she had been the head of general surgery. The entire admissions process, and RDPs at SU, were not clear to her when she became Dean Designate.

[41] She represented the Faculty at a meeting of the Rectorate and Deans Forum held on 8 December 2021. She raised the problem of over-selection for the 2022 academic year of MBChB students, and requested the Rector to give up his three placements for that year. Her request was declined. The Rector subsequently sent her a WhatsApp message which she thought implied that she had been the 'messenger' for the Faculty and did not have personal concerns about admissions to the Faculty. That was not the case.

[42] Professor Muller explained to the Committee that several factors are taken into account when medical students are selected. These were traversed by Dr Retief, Dr Fish, and Ms Fredericks as well – namely academic merit, race and socio-economic disadvantage. Students with prior university experience were placed in a separate category. She emphasized that the Faculty cannot expand the number of places they have, particularly in the MBChB degree, which is strictly governed by the requirements

of the Health Professions Council of South Africa (HPCSA). The selection process is entirely out of the Dean's hands. It is run by the Faculty administrators and the Registrar's Office. Professor Muller came to realise when she was Dean Designate that because of an administrative problem in the Deputy Registrar's office in 2021, the 2022 year was oversubscribed. This was problematic because of the HPCSA's restriction on the number of MBChB students that could be admitted in any year. If too many graduated they could not all register with the HPCSA as practitioners, and there would be insufficient intern places. Too many graduates in one year would affect graduates in later years when they needed intern places – hence her request at the Rectorate and Deans forum for the Rector to forgo his discretionary placements.

[43] After that meeting, Professor Muller discussed the issue with Professor Volmink and members of the management of FMHS, and they advised her that the oversight of RDPs lies with the Registrar, and her concerns should be raised with Dr Retief. She followed this up by sending an email to Dr Retief, on 10 December 2021, asking a number of questions about the RDPs. These included a request for an assurance that any applicant placed met the admission criteria. She added that because of restrictions on student numbers, she felt that the practice was 'baie onregverdig', partly because other applicants who were more deserving of a place might be excluded from consideration. She also questioned what criteria the Rector used, and whether the practice did not open the University to litigation. She asked also whether there was protection against any conflict of interest – a prescient question – and whether the practice was generally known. Was there a process available for applicants to find out about the possibility of an RDP? Dr Retief responded by email on 14 December saying that they needed to have a proper discussion, with the Rector, about her questions in the new year.

[44] Professor Muller considered that the only period in which any discretionary placement should be made was just before the start of a new academic year when faculties would know how many applicants for places in a degree had actually registered. There was always uncertainty about numbers until then. Some successful applicants would take up places at another university or change their minds about doing a particular degree. When the actual number of students was known, and there appeared to be more places than students, it would be useful to have a committee

within a faculty which could exercise a discretion to admit more students who met the criteria for admission and who might further its transformation and diversity goals. She believed that that was what UCT did.

[45] Professor Muller suggested that the committee interview Professor Stan du Plessis, a former Dean of the Faculty of Economics and now the Chief Operating Officer (COO) of SU, who was responsible for risks to the University. (We followed up on that suggestion.) On the evening of 28 October 2022, on hearing about the placement in the MBChB of the Rector's nephew [REDACTED] for 2023, she phoned Professor du Plessis to alert him to the possible furore that might result when the placement was made public. He advised her that it was the Registrar's responsibility and that he would contact the Registrar to discuss the issue. He spoke to Dr Retief that weekend and advised that [REDACTED] placement should be reversed. Dr Retief, on that weekend, spoke to the Rector and relayed this advice. The Rector had retracted the placement on Sunday 30 October.

[46] But on that Sunday evening, 30 October, Professor Muller's personal assistant received a copy of the emails which Mr [REDACTED] had sent to Ms Fredericks and a Mr Links, who had been dealing with the admissions process. Professor Muller considered the information in the correspondence to be very concerning, and forwarded it to Professor du Plessis. He phoned her the following morning to say that [REDACTED] placement had been retracted. And the Rector phoned her on that day too and confirmed that his decision had been reversed. She had several conversations with the Rector subsequently, and he made no mention of his earlier placement of [REDACTED] in 2021. Early in April 2023 the matter had reached the press and she asked the office of the Registrar to send her a list of students in the FMHS placed by the Rector. She realized that the Guidelines for RDPs were not in line with the Admissions Policy which requires that RDPs be discussed with the Dean of the Faculty.

[47] Professor Muller wrote an email to Dr Retief on 3 April asking why she had not been sent the guidelines the previous year as, unlike her predecessor deans, she would have preferred to make any decision herself. She pointed to the discrepancy between s 7.4.9 of the Admissions Policy and the RDP Guidelines and asked that she

be consulted in the future when placements were made by the Rector. Dr Retief responded by explaining that previous deans of the faculty had not wished to be involved in making any discretionary decisions, but that she doubted whether the same practice would follow in the future. Professor Muller had also written to Professor du Plessis confirming her qualms about the whole process.

*Professor Stan du Plessis*

[48] In giving evidence, Professor du Plessis confirmed what Professor Muller had said about the unfolding of events in October 2022 and in April 2023. He explained his position at SU as COO, and the evolution of the role to take control of governance, which in earlier years had rested with the Rector. The role of the Rector had also evolved and he had taken charge of strategic direction of SU and raising funds for programmes and initiatives within the University.

[49] Like several other SU senior personnel, Professor du Plessis did not know that the Rector had previously exercised his discretion in respect of [REDACTED]. It came as a great surprise to him when, at a time when he was abroad, he learned from the Chair of Council, who phoned to tell him about the first placement and from the press. He was distressed that he had not been told before, and felt that the Rector should have disclosed that to him when they were discussing [REDACTED] placement in the MBChB.

[50] Professor du Plessis considered that his advice to the Rector to retract [REDACTED] placement was correct. He had made an 'ethical mistake'. The credibility of the Rector in failing to disclose the earlier placement of a nephew called into question his ethical insight. He had failed the duty of SU, as a public institution, to be accountable for its decisions. He thought that the Rector also needed to account for his decision in respect of [REDACTED] and take SU's commitment to accountability seriously.

[51] We shall deal next with the evidence of two senate members who are from different Faculties – Professor N Smit, the Dean of the Faculty of Law at SU, and Professor Le Grange, also a senate member and an academic of long-standing in the Faculty of Education.

*Professor Smit*<sup>10</sup>

[52] Professor Smit has been the dean of the Faculty of Law since August 2017. She had previously been a Vice Dean at the University of Johannesburg, and had also worked at North West University for 5 years. Her academic expertise lies in Labour Law. Law, like medicine, has many more applicants for admission than it has places. For the undergraduate LLB there are some 13 500 applicants for 120 places. Forty to fifty students were placed in the postgraduate LLB. However, applicants can be admitted to other undergraduate degrees – B Com or BA, primarily – which include law courses in their curricula. Some 1 200 students are admitted in these streams.

[53] Because there is competition for places in the Law Faculty there was often lobbying by stakeholders for admission for relatives and friends. It is a difficult situation for staff to handle. There were for the period 2020 to 2023 three RDPs: one in BCom law; one in BA law, and one for the LLB. She viewed the RDPs as undesirable. While discretion was needed in every faculty for applicants with exceptional circumstances, such discretion should be exercised at faculty level and not by the Rector. And no individual should be left with the decision-making power alone. Moreover, academics in relevant programmes should be consulted. Factors such as race and disadvantage, and the need for diversity in the student body, were already taken into account when admissions were considered.

[54] Professor Smit did not think that any of the SU policies had been breached by the placing of the Rector's two nephews in the MBChB degree programme, but considered that the policies on nepotism and conflict of interest should be revisited to determine whether they should be made expressly applicable to student admissions. She did not believe that nepotism or favouritism was rife within SU.

*Professor Le Grange*<sup>11</sup>

[55] Professor Le Grange works in the Faculty of Education at SU, and has been a Senate Member for 20 years. He is also a member of the Council for Higher Education

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<sup>10</sup> The transcription of Professor Smit's evidence was not possible as the tapes were apparently inaudible. Committee members did, however, make notes.

<sup>11</sup> Professor Le Grange was interviewed through electronic connection.

that oversees standards for all South African students at university. He was not aware of the Guidelines for RDPs and had not heard of the Rector's discretion previously. (This despite the fact that the Guidelines had been approved by Senate in 2018.) He believed that no other university in the country made provision for special placements by the Vice Chancellor and thought that the discretion was unnecessary. He understood that the practice was common in residences but did not condone it. His view was that the issues around race-based discrimination, and discrimination against women, especially historically in FMHS, required attention.

We shall turn now to the evidence of ██████████, the mother of ██████████.

██████████

[56] ██████████ evidence emanates from two sources: first, an affidavit that she deposed to and sent to Mr Jan Heunis SC, and which he placed before Council; and second an interview that the Committee had with her. In addition, her husband, ██████████ ██████████, sent several communications to the Committee and to SU staff, emphasizing SU's own policies and asking whether they had been applied.

[57] A brief chronology of the events as they unfolded is necessary before turning to ██████████ evidence. On 17 September 2022 ██████████ was advised that her application to do the MBChB in the FMHS for 2023 had not been successful. On 20 September she wrote to the FMHS asking what her position was on the waiting list. On 21 September a Mr C Links in the selection office of FMHS wrote to her explaining that she was on the waiting list but that the first 50 on the list had an average matric mark higher than hers.

[58] On 5 October, ██████████ was advised telephonically that he had been accepted for the MBChB. We assume that the matric class all knew that two classmates had applied to do medicine at SU. On 12 October ██████████ asked Mr Links what the criteria for acceptance were, given that a person in her class with a lower mark average was accepted. Mr Links responded by saying that he could not disclose any information about the successful candidate because of the provisions of POPIA. ██████████ answer, written on 14 October, was that she knew the identity of the person who had been admitted. Her father followed that up by writing to Mr Links and Ms

Fredericks requesting a reply to [REDACTED] letter, and for a meeting with SU staff.

[59] In her affidavit that was placed before Council by the proposers of the motion to dismiss the Rector, [REDACTED] explained how her daughter, [REDACTED], had come to know that [REDACTED], who had been in school in Wellington with her throughout their school years, had been awarded a place in the MBChB at SU. She, however, had not been given a place, but she accepted that her average mark (90%) in her matric year was two per cent lower than that of many other applicants who had been put on a waiting list.

[60] In her affidavit, that she had sent to Mr Heunis SC, and that he had tabled before Council, [REDACTED] explained how her daughter, [REDACTED] ([REDACTED] name did not appear in the affidavit), had come to know that [REDACTED], who had been in school in Wellington with her throughout their school years, had been awarded a place in the MBChB at SU. She had not been given a place.

[61] She could not understand how [REDACTED] had been accepted ahead of her as his marks in the matric year had been some five per cent lower than hers on average. So she wrote to the FMHS enquiring how this had happened, and we have already discussed the Faculty's reluctance to disclose information about [REDACTED] because of POPIA. When she received no explanation, she was already starting matric exams and so her parents followed up on the enquiries. They had learned subsequently that [REDACTED] was the nephew of the Rector. Hence the email sent by [REDACTED] to Ms Fredericks on 27 October 2022 showing the De Villiers and [REDACTED] families in the 2018 Cape Town Cycle Race, with their heads circled and the caption stating that this was the route to medicine if you were a family member of the Rector. Their follow-up meetings have been described by Dr Retief.

[62] [REDACTED] said, in her affidavit, that she understood that the RDPs were a part of SU's admissions policy, but thought that the process had worked unfairly. [REDACTED] removal from the MBChB for 2023 had worked harshly on him, and as a result [REDACTED] was victimised at school and ostracised by her former friends. She considered that Dr Retief's statement at their interview that the retraction had to be

effected 'to protect the SU and the Rector's integrity' amounted to highly inappropriate conduct.

[63] In her interview, ██████████ emphasised that ██████ had done no more than make enquiries as to why her application had not been successful; she had never intended to deprive ██████ of a place. That had happened because of the SU personnel's failure to disclose the existence of RDPs timeously. She had no idea how ██████ had learned that it was ██████ enquiries that led to the retraction of his place. The Committee assumes that ██████ inferred this from the circumstances – they were competitors in the same class at the same school for a place in the MBChB.

[64] The balance of Mrs ██████ affidavit dealt in detail with all the correspondence exchanged by ██████ and her parents and the FMHS. In giving oral evidence, she confirmed that the ██████ family had never wanted to make their names public. And they thought that the retraction of ██████ placement was inhumane, and could not take responsibility for it. She said she thought they were doing the right thing in calling out bad practices, but had not realized what the consequences would be. They had never intended the press to get hold of any of the information. And they did not pass it on to anyone but Mr Jan Heunis SC and Dr Leon Schreiber.

[65] The Committee was concerned as to why they had sent the information and an affidavit to Mr Heunis SC, who was the President of the Convocation, in March 2023. ██████████ claimed that the family had wanted to put the whole saga to rest, and when ██████ was offered a place in its MBChB by the University of Pretoria, in early 2023 she accepted it. (She had also been offered a place in the University of the Free State programme.)

[66] ██████ was thus already in residence in Pretoria in March 2023 when ██████████ sent her affidavit (via email) on 16 March 2023<sup>12</sup> to Mr Heunis SC and to Dr Schreiber, both members elected to the Council by the SU convocation. She explained to us that she and her husband were at their wits' end in trying to get answers from the FMHS

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<sup>12</sup> The affidavit was attested only on 29 March in Wellington.

(this was long after they had met Dr Retief and been given the information) and so had turned to the convocation as a body within SU but not part of its administrative structures. She had obtained their names and contact details from the Convocation website.<sup>13</sup>

[67] Again, this explanation troubles us. [REDACTED] had already settled in at UP in March 2023, and they said they had hoped to put the whole saga behind them. But, [REDACTED] [REDACTED] said in her affidavit, they had concluded that it 'would be in the interests of SU's oversight role over the Rector's work ethic, transparency, accountability and *modus operandi* to bring it to the attention of SU office bearers'.

[68] [REDACTED] in a confirmatory affidavit, confirmed the contents of his wife's affidavit and both were sent together with [REDACTED] CV, the Nepotism Policy and the Conflict of Interest policy to Mr Heunis SC and Dr Schreiber. Although the names of [REDACTED] and [REDACTED] were redacted, the [REDACTED] affidavits obviously bore their names and the identities of [REDACTED] and her school friend were obvious.

[69] The other matter that [REDACTED] raised in her interview, in response to a question, was that she and her husband had felt intimidated by Dr Retief, who had brought a witness with her to their meeting. The [REDACTED] were not assisted by anyone, and so [REDACTED] furtively recorded the conversation. She had looked at the transcript that she had made again only before her interview, and it confirmed what she remembered. The transcript is clearly not confirmed by anyone else. But it repeats what she said in her affidavit and evidence: that it was inhumane to have retracted [REDACTED] placement on the eve of the matric exams. Dr Retief agreed that it was not ideal. And she confirmed that the guidelines for RDPs were not in the public domain, but said that it was a long-standing practice.

[70] When [REDACTED] asked if there had not been a 'red light somewhere', Dr Retief responded that perhaps there should have been, but she had told the Rector that his discretion was wide – that it was his choice. But when the Rector had to decide to withdraw the placement of his nephew, it was done in the interests of the University

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<sup>13</sup> Dr Schreiber, who is not a member of the Executive of Convocation, does not currently appear on the website.



Convocation who is on Council, to dismiss the Rector at the Council meeting of 17 April. Mr Heunis SC gave evidence before the Committee first, so we shall deal with it before that of Dr Schreiber. Mr Heunis SC insisted on giving us an account of all the instances where he believed the Rector had brought SU into disrepute. Most of his evidence is thus not germane to the question before the Committee: whether the Rector, by using his discretionary powers to place his two nephews in the FMHS for the MBChB degree, was guilty of misconduct warranting dismissal in terms of s 42(3) of the Institutional Statute, to which we referred earlier.

[75] He referred to the policy on nepotism and that on conflict of interest and asserted that the Rector had committed a breach of both policies of SU. That misconduct had brought the University into disrepute. The Rector had already done that in Mr Heunis's view, through other ill-judged steps (in his view) which had alienated many people, especially Afrikaans speaking people in the Western Cape Province. He handed over copies of press cuttings where the Rector and SU were referred to in disparaging terms.

[76] We asked him pointedly whether the placement of the Rector's nephews amounted to misconduct warranting dismissal. He prevaricated but persisted in saying that overall, the Rector was a bad apple in the barrel and the risk of dismissing him should not be a factor taken into account in deciding whether to dismiss him. His view was that there were many suitable people who could replace him. He suggested also that the Rector's conduct in this latest incident may well have alienated donors. We asked him to provide evidence of that if he had it. At the time of writing the report, the Committee had not received any such evidence. We did in due course ask Professor de Villiers for evidence in this regard and shall discuss it when dealing with his interview.

*Dr L Schreiber*

[77] Dr Schreiber's unequivocal view was that the Rector had behaved unethically and dishonestly in awarding places to his two nephews in the MBChB programme. He referred extensively to the nepotism policy and the conflict of interest policy. We put it to him that the policies did not expressly apply to student admissions, but he argued that their goals and underlying principles did apply. The aim of the nepotism policy is

to 'prevent unfair preferential treatment, as well as situations that may result in conflicts of interest'.<sup>15</sup> The conflict of interest policy is for 'disclosure, management and mitigation of conflicts'.<sup>16</sup> The tenor of the policy is to prevent conflicts in procurement practices of SU, as well as to regulate academic private work in conflict with SU's interests. The key words for the policy relate to conflicts and disclosure and management of commercial, financial and 'relationship interest'.

[78] Dr Schreiber's view was that the Rector had acted in breach of both these policies. And even if that were not so, his conduct had been unethical and dishonest. He did not indicate in what way the Rector had been dishonest – had deliberately and falsely done something or failed to do something. Where had he deceived anyone or made a false statement? We shall deal with this question later. For the moment we should note that he had failed to disclose the earlier placement of his nephew ██████ when the furore around ██████ place broke out, but whether or not that was deliberate non-disclosure with intent to deceive is another matter. Whether his conduct was unethical remains to be considered.

[79] Dr Schreiber was chiefly concerned with the reputation of SU, which, unlike several other universities in South Africa, had not yet been mired in corruption. The Rector's conduct, he considered, would change that perception. His dismissal would at least signal that there was 'zero tolerance' for corruption at SU. The South African public, he said, was 'desperate' to see some accountability. SU could not afford to have a cloud of corruption hanging over it.

[80] The last person to be interviewed by the Committee was the Rector and Vice-Chancellor, Professor Wim de Villiers.

#### *Professor de Villiers*

Professor de Villiers was accompanied by two legal representatives of his own: Mr B Josephs SC of the Cape Bar, and Mr M Heyns of Werksmans attorneys. This was allowed for under the Terms of Reference for the Committee. Professor de Villiers declined to make a written statement ahead of his interview.

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<sup>15</sup> The policy was implemented in 2000, and last reviewed in 2011.

<sup>16</sup> It was implemented in 2013, and was due for revision in 2021. We do not know if it was in fact revised.

[81] He chose to begin by placing the issue to be investigated – ‘the two incidences (sic) of alleged nepotism and whether any other nepotistic academic and residential placements were made by the Rector’ – in context by describing his tenure at SU as Rector. He explained that he had been working abroad for 22 years before returning to South Africa, first as Dean of the Faculty of Medicine at UCT in 2013. He had been appointed as Rector and Vice-Chancellor of SU on 1 April 2015, and is thus in his ninth year and in the second term in the role. He has two further years to stay at the helm of SU. Dr Ronel Retief became the Registrar of SU in 2017. Before her appointment, he had worked with the Registrar who had been in the position for many years, Mr Johan Aspeling. Mr Aspeling had enormous institutional knowledge and was familiar with the RDP practice.

[82] When Dr Retief took up the position, the role of the Registrar became ever more important, and she had become a member of the Rectorate, reporting directly to the Rector. She sought to put some SU practices into tighter parameters, and to stop ad hoc arrangements. She had overarching responsibility for all SU policies. One of the issues she had taken up was that of RDPs. Although she was familiar with these, having worked in the FMHS for many years, she wished to bring all faculties into alignment, and had initiated a task team to work on guidelines for RDPs for general use by faculty staff. This was an initiative supported by faculty staff, and the guidelines had been approved by Faculty and Council in 2018.

[83] The Rector explained the RDP processes and his understanding of the guidelines. Before he had become Rector there was a long history of RDPs. Although records dated back only to 2001 (according to Dr Retief) the Rector knew that it had long been the practice of Rectors who preceded him. This was confirmed by Professor Andreas van Wyk, one time Dean of the Faculty of Law and later himself a Rector. He submitted a statement to the Committee saying why he thought the exercise of a Rector’s discretion was important, and gave various examples. It was Dr Retief who had decided that guidelines for the exercise of the discretion were necessary and she had appointed a task team to draft them.

[84] The guidelines, as we have said before, were for the use of the faculty administrators only. While the Committee had laboured under the misapprehension that the Rector could exercise his discretion only after consultation with the Dean in question and where there were exceptional circumstances, that was not what the guidelines required. Consultation with the Deans was in respect of the number of placements only. Individual applicants were not discussed. This accorded with Professor Muller's evidence and that of Dr Retief. The Rector pointed out, after discussion with his representatives, that the guidelines did not require any applicant to show exceptional circumstances: they expressly stated that the Rector could *waive* any of the criteria for the exercise of the discretion (including that the applicant had met all the criteria for admission) in exceptional circumstances. The guidelines are thus not consonant with clause 7.4.9 of the SU Admissions policy, which states that the Rector may, 'after consultation with the deans' in his or her discretion request admission according to individual circumstances in each case.

[85] Professor de Villiers wished to emphasise at the outset that he had acted in good faith in deciding to make available to his two nephews RDPs in the MBChB. He believed that he had an unfettered discretion to do so – a discretion Dr Retief had told him was 'so wyd soos die Heer se genade'. In so far as the admission of his nephew ██████ to the FMHC was concerned at the end of 2021, he said that ██████, when his application, in the first instance, to register in the Faculty was unsuccessful, sought his advice. The Rector had asked Dr Retief to write to ██████ explaining his options: he could apply for a BSc and complete a first year and then apply again; or complete a BSc and apply again (in a different category from school leavers) or apply for an RDP. He chose the second option, and completed a BSc. When his second application for the MBChB was unsuccessful he applied for an RDP. The FMHS had sent his application to the Rector with others. At the time, the Rector had advised Dr Retief that ██████ was the son of his wife's sister.

[86] He considered ██████ application and believed that he had the academic ability and other attributes necessary to make a good doctor. Professor de Villiers said that he had considerable experience in selecting applicants for admission to medicine: he had been on the selection committee of the University of Kentucky medical school

for some 12 years. He felt competent, therefore, to decide that [REDACTED] application was worthy and the FMHS was advised to admit him.

[87] In [REDACTED] case, he had applied directly for an RDP. The Rector believed him to be academically better than his older brother, [REDACTED], and considered him to be a 'meritorious' candidate for the MBChB. He consulted Dr Retief, who had advised him that the discretion was very wide, and although she knew [REDACTED] was the Rector's nephew, advised him to make available to him an RDP. None of that is disputed. He repeated that he had done nothing wrong.

[88] The Rector gave several other instances where he had placed students for 2023 in the MBChB. [REDACTED] application was considered ad hoc. The others came via the FMHS after [REDACTED] had been granted a place.

[89] Asked why, if he had done nothing wrong, he had retracted [REDACTED] placement, he said that he regretted having done so. But he had acted on the advice of the Registrar and the COO, Professor Stan du Plessis, who were anxious about the impression that had been given, particularly after [REDACTED] had sent the photograph of the Cape Cycle Tour in 2018 to the FMHS, which Ms Fredericks had been alerted to, and forwarded to the Rectorate. They believed that the impression created would be detrimental to SU, and he accepted that. But he now regretted that he had taken that advice, because the impression then created was that he had done something wrong in the first instance. He repeated that he had done nothing wrong.

[90] He also regretted the statement that had been distributed on the SU newsletter and sent to Council, drafted by the then acting Chair of Council, Dr N Newton-King, on the advice of the chancellor, Justice E Cameron, in which it was said that the Rector regrets the circumstances and admitted to an error of judgement. He had insisted that the statement be corrected to reflect that he regretted the circumstances and the tumult that it had caused, but did not admit to an error of judgement.

[91] The other matter he regretted was that the Rector was placed in an unenviable position: he had no 'protection'. The decision was his alone, and he believed that he needed a senior person in the Rectorate (perhaps a senior legal counsel) to advise on

placements and other matters. The Committee put it to him that it was the general view of SU staff whom we had interviewed that no single person should exercise an unlimited discretion: we suggested a committee of three at Dean's level who would be tasked with considering exceptional applications. There is already provision for that, although not formalised, in clause 7.4.8 of the Admissions Policy which provides: 'The dean may in his or her discretion, admit students to a mainstream or EDP in highly exceptional cases, with a view to promoting diversity and compensating for socio-economic disadvantage.'

Neither of the [REDACTED] brothers would have been considered under this provision, however.

[92] Another factor to which the Rector took grave exception was that his conduct had been viewed as anti-transformative: the placement of two white men, related to him by marriage, in a degree for which competition for places was stiff, appeared to be an 'untransformed' move. This was an accusation levelled by Mr Heunis SC and by [REDACTED] in his emails about the unfairness of the process. It was indeed made by many critics who voiced their views via the media, especially social media.

[93] The Rector considered that opinion to be totally false and unacceptable. He had said in his inaugural address that his vision was to turn SU into a multilingual African university of excellence. He had achieved much of that: there were in 2023 more postgraduate students than undergraduates, the majority of whom were not 'white'; he had fundraised significantly and had ensured a transformed and diverse student body. SU had made significant strides in ensuring diversity since he had taken office.

[94] The Committee raised with the Rector the view of people whom we had interviewed who had lost trust in him particularly because of his failure to disclose [REDACTED] placement when the furore around [REDACTED] erupted. He said that he would 'take that on board' and would try to build up relationships damaged by the incidents. However, he said that he had not dishonestly concealed the fact of the earlier placement (in 2021/2022) because it did not occur to him at the time. He had acted properly in that case too and had nothing to disclose.

[95] In so far as residence placements were concerned, the Rector said that they were controversial and difficult to handle because different stakeholders put pressure on SU, and on particular residences to admit family, friends, athletes and donors' family members. Previous rectors had struck a deal with the 'Wilgenhofbond' (old boys' association) to place their chosen students in Wilgenhof, and previous rectors had agreed to this on condition that the 'bond' pay for a number of students from diverse backgrounds in residence. The Rector had tried to ameliorate the deal by requiring more 'diversity students' to be paid for by the 'bond'. But he said, the residence placements were already being re-examined.

[96] One of the first questions that we put to the Rector was whether he had, through the exercise of his discretion, placed any other members of his family in an academic programme or in a residence. He elected to answer this only after putting the [REDACTED] incident in context. The answer was no: he had, however, made enquiries of the person in charge of residence placements, Dr Celeste Nel, about his brother's grandson, [REDACTED]. She had advised him that no special placement was necessary since [REDACTED] had been admitted to a residence on both the grounds of merit and diversity – he had self-identified as Indian. Dr Nel confirmed that in an email written to Werksmans Attorneys on residence placements.

[97] The Rector said that it was important to place the political attacks on him in perspective. As he had said, some alumni were determined to maintain the status quo as it was when they were students at SU themselves: they wanted it to be predominantly Afrikaans-speaking, and his transformation agenda had been questioned repeatedly. In 2020 some Afrikaans students had complained that in 'welcome week' they had been forced to speak in English and were not allowed to speak Afrikaans amongst themselves, even socially. There was no policy in place that required this, but apparently some student heads of residences ('prim's' – primarius in the case of a male residence), particularly in some women's residences, had imposed the practice.

[98] Various parties had brought the matter to the Human Rights Commission in 2021. The Freedom Front Plus and Dr Schreiber were the complainants. SU was the respondent, represented by the Rector. He made it plain that it was not the policy of

SU to prohibit the speaking of any language, let alone Afrikaans. The HRC report, released on 13 March 2023, made no findings against either SU or the Rector. It considered that some residence heads had taken it upon themselves to enforce a practice, in Welcome Week, which had divided the student body and impaired the rights of some students to dignity and equality. It accepted that the practices of some of the residence heads went against the language policy of SU.

[99] SU has already put in place a Committee to follow up on the findings of the HRC and to take remedial steps to change institutional culture. Despite no finding being made against the Rector, Dr Schreiber, as soon as the report was released, sent out a tweet that stated that SU was guilty of gross human rights abuses, and that as a result he was going to propose a vote of no-confidence in the Rector at the next Council meeting. Subsequently, a motion of no confidence in the Rector on the basis of the HRC report was overwhelmingly rejected by the SU Senate on 24 March 2023 (Professor Madonsela submission below and written submission of Mr G C van Eeden.)

[100] And following on the release of the report, Mrs [REDACTED] sent her complaints and documents to Mr Heunis SC and to Dr Schreiber. It appears that the HRC report was generally either not read, or misunderstood. In the event, at the meeting of the Council on 17 April, a few weeks after the release of the report, a motion of no confidence because of the HRC report was not proposed. In its place, as the Rector saw it, the motion relating only to the charges of nepotism was proposed.

[101] Asked about the risks to funding that might arise from the allegations of nepotism, the Rector said that there might be some fall-off (as there had been after the Khampepe report on racism within SU), but the greater risk to fundraising lay in not following through on the transformative strategies to improve the university experience of all students. He said that the first few months of 2023 had been some of the best ever for raising funds for SU initiatives. We shall deal with the Rector's evidence when evaluating the evidence as a whole.

## H. THE WRITTEN SUBMISSIONS TO THE COMMITTEE

[102] Numerous written submissions were sent to the Committee by SU alumni and staff.<sup>17</sup> There are several letters to the Committee about a culture of ‘protection and non-transparency’ on the SU campus. None related to RDPs directly, however, and are beyond the remit of the Committee. Moreover, several writers elected to remain anonymous. We shall refer to a few of the helpful submissions, but not all.

*Professor Thulisile Madonsela – Law Trust Research Chair on Social Justice SU*

[103] Professor Madonsela, now a member of the SU Social Justice initiative, and formerly South Africa’s Public Protector, wrote a submission to the Committee setting out her views on the motives of Mr Heunis SC and Dr Schreiber in proposing the motion of no confidence. She pointed out that the move was contrary to the tenets of the law on administrative justice since they had not given the Rector an opportunity to be heard before proposing the motion. She also suggested that their conduct was rooted in a ‘malevolent motive’ to remove the Rector from office ‘by whatever means that will stick’.

[104] She considered the nepotism policy and was of the view that the [REDACTED] brothers did not fit within the definition of family since they were related to the Rector only by affinity. In our view, that is too narrow approach but nothing turns on this since the nepotism policy is designed to deal with SU staff, and not SU student admissions. Whether that policy should be extended to student admissions remains to be debated. As to the Conflict of Interest policy, Professor Madonsela said that each case should be examined on its merits, to consider whether the conflict should be allowed to continue in the greater interests of SU, and managed accordingly. She did state, however, that where there is any genuine conflict, there must be disclosure.

[105] Her view on the retraction of [REDACTED] placement was that, although the Rector had done nothing wrong, he showed integrity in the face of information that it was not ethically permissible.

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<sup>17</sup> A comprehensive list is set out as Addendum B.

*Professor W A Landman, Professor Extraordinaire in the Department of Philosophy*

[106] Professor Landman submitted a written opinion in which he said that, on the assumption that The Rector was not in breach of the policies of SU, in which case he was not guilty of any breach of a legal duty, one still had to question whether he was guilty of a breach of ethical standards. He considered that one had to ask this question without having regard to the politics at SU, and the motives of those who had proposed the motion to dismiss the Rector.

[107] Professor Landman stated:

‘In my view, the Rector acted unethically. Of course, this requires argument, but here I can only suffice with *listing* some of the ethical standards I believe to be at issue.

- a. *Fairness/justice* (a comparative value requiring the application of equality considerations or equitable treatment rather than arbitrary differential treatment of individuals);
- b. *Truthfulness* (honest talk when there is a duty to speak up);
- c. *Transparency* (an institution making available publicly the considerations and outcome of a policy decision rather than waiting to be pushed into a corner before doing so);
- d. *Harm principle* (refraining from harming others, directly or consequentially); and
- e. *Integrity* (a value encompassing all relevant ethical standards in the circumstances).

[108] Professor Landman continued:

‘Moreover, US as an institution finds itself in a social and political context that is in a crisis of survival where corruption and fraud have become endemic (rather than merely episodic), undermining the very fabric of our society, causing extreme distress, unemployment and poverty among others. This reality calls for special circumspection by individuals tasked with institutional responsibility. If those who ought to set a clear, impeccable example fail to do so – through actual legal or ethical transgression, or by creating unnecessary negative perceptions – consequences will be so much worse for society.’

We believe that Professor Landman’s views expressed in the last paragraph are of particular importance and we shall revert to them in evaluating the entire context in which the placements of the Rector’s two nephews were made.

*Dr Grant Son*

[109] We note also the views of Dr Grant Son, an alumnus who stated:

‘Any form of bias or nepotism undermines the values of a democratic and inclusive society and hinders the development of individuals and communities. . . . [I]t is essential to promote fairness and meritocracy in all aspects of society to achieve sustainable and inclusive development.’

Dr Son concluded that the Rector should allow his ‘conscience to guide him on making the right decision and to avoid the unnecessary attention the university is suffering as a result of his actions’.

*Other submissions of note*

[110] Several alumni and the former Chair of Council, Mr George Steyn, expressed their views to the committee as well. They pointed to the unfortunate apparent conflict that might arise between Senate and Council in respect of the incidents under investigation. They considered, overwhelmingly, that the motion to dismiss the Rector was unprecedented and driven purely for political purposes.<sup>18</sup> But Mr Steyn considered that the Rector ‘had scored an own goal’ that would give rise to complications. He had always, in his tenure as Chair of Council, known about discretionary placements and considered them ‘ ‘n wollerige affêre’ that required review. As far as donors to SU were concerned, Mr Steyn said that major donors, some of whom sat on Council, had made substantial donations to SU and would continue to do so.

[111] Mr Andricus van der Westhuizen, an alumnus and Member of the Western Cape Provincial Legislature, wrote to the Committee stating that his understanding of the discretionary placements was that exceptional factors would be taken into account to ensure improvement of the selection process which took into account only school or university marks – it was to ‘achieve a more “just” list of successful applicants’.

[112] Professor Andreas van Wyk, to whose views we have already referred, also addressed a letter to the Committee in which he described discretionary placements

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<sup>18</sup> Retired Judge Fritz Brand, Professor Gerhard Lubbe, Chris Otto and Michiel le Roux in a letter to the current Chair of Council, and forwarded to the Committee by Mr Steyn.

as ‘ ’n noodsaaklike meganisme . . . om billikheid in buitengewone gevalle te bereik’. But he suggested other mechanisms that could be used to avoid selection on nothing but applicants’ marks.

## I. EVALUATION

[113] We have been asked to consider the motion to dismiss the Rector, in terms of s 42(3) of the SU Institutional Statute, on the ground of serious misconduct. First, we must note, due process has not been observed. Before any consideration of dismissal arises, an employee must be given an opportunity to be heard. That is for the sake of procedural fairness. The proposers of the Motion to Dismiss the Rector, that served before the SU Council on 17 April 2023, did not give the Rector any opportunity to explain his conduct. That is procedurally unfair, as Professor Madonsela pointed out. The Motion should not have been placed before Council in the circumstances.

[114] Second, serious misconduct is not defined in the Institutional Statute. Looking at the Labour Relations Act and commentaries on it,<sup>19</sup> it appears that dismissal for serious misconduct must be an appropriate sanction for the breach of a rule or standard. The cardinal test for determining whether dismissal is warranted requires that one must ask, first, whether there has been any breach of a rule or a policy, and second whether the employee’s conduct ‘has destroyed the necessary trust relationship or rendered the employment relationship intolerable’.<sup>20</sup>

[116] The first question is whether the Rector was in breach of any rule or policy. Those who demand his dismissal refer to the Nepotism Policy and the Conflict of Interest Policy. Neither policy applies to student selection and admission however. Dr Schreiber said that although that may *prima facie* be so, the principles embodied in the policies were wide enough to encompass student selection. However, in our view, the policies were drawn up with specific objectives in mind, and responsibility for their implementation rests with the department of Human Resources. The ‘owner’ of both policies is the Vice-Rector: Social Impact, Transformation and Personnel: the curator for the Nepotism Policy is the Chief Director: Strategic Initiatives and Human

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<sup>19</sup> Particularly Labour Relations Law: A Comprehensive Guide (6 ed) by Du Toit et al pp 441 ff.

<sup>20</sup> Op cit p446.

Resources. The curator for the Conflict of Interest Policy is the Chief Director: Human Resources. The policies, *read in context*, apply only to SU staff.

[117] And in any event, both policies were adopted before the formal guidelines for the RDPs were drafted. We must assume that when Senate and Council approved the guidelines, members were aware of the policies that had previously served before them, and that they were aware of clause 7.4.9 of the Admissions Policy, implemented in 2017, which referred to the Rector's discretion.

[118] We do not, therefore, consider that the Rector was guilty of any breach of a policy or rule. Nonetheless, Dr Schreiber insisted that the Rector was guilty of dishonesty, such as to warrant dismissal. The dishonesty lay in making the placement of [REDACTED], and then withdrawing it, and in making the placement of [REDACTED] and not disclosing it when the Rector was effectively caught out by the 'whistleblower', [REDACTED]. So the inference to be drawn, on this argument, is that the withdrawal of [REDACTED] placement shows that the Rector knew that he had done something wrong.

[119] The Rector's evidence counters this, however. He said – and this has not been disputed – in each case he had disclosed his relationship to the [REDACTED] bothers to the Registrar. The Registrar recollected the placement of [REDACTED], after an application was made for an RDP through the Faculty, and knew then that [REDACTED] was a nephew by marriage of the Rector. When the Rector consulted her about the later placement for [REDACTED], she had said that his discretion was very wide. She knew he was related to the Rector. Accordingly, in a letter to the [REDACTED], she had taken responsibility for the placement of [REDACTED].

[120] The Registrar's advice was not in itself wrong. And the Rector testified that he had been entirely bona fide in making the placements: he had done nothing wrong, he believed. Dr Schreiber has not proved, even on a balance of probabilities, that the Rector acted dishonestly – with the intent to deceive or falsely. We find that the Rector was an entirely credible witness.

## J. FINDING

[121] We find, therefore, that the Rector was not guilty of any serious misconduct that would warrant dismissal. This is not a disciplinary hearing, under the Labour Relations Act: it is an enquiry to determine whether the Rector was guilty of any breach of a principle or policy of SU. In the absence of a procedurally fair process to determine such guilt, we can find no serious misconduct. Moreover, the Rector has not been shown to be guilty of any breach of a policy or rule, or of dishonesty that entails a finding that there has been a breakdown of trust between SU and the Rector. This finding does not suggest that the policies and processes of SU are appropriate or fair.

[122] Nor does this finding exonerate the Rector altogether. We consider that the failure on his part to perceive that any discretionary placement would, or could, lead to favouritism and accordingly discrimination, contrary to the values of the Constitution, and the impairment of applicants' dignity and right to equality, was regrettable. He should not have been in a position to exercise his discretion given the perceived conflict of interest. It is the unfettered discretion allowed by the Guidelines that are problematic. The Rector hastened to point out that ██████████ was not prejudiced by his placement of ██████████ in the MBChB: she would not have made the cut anyway, since her marks were below those of many on the waiting list for the degree. That is to miss the point.

[123] The fact is that there may have been other applicants placed on the waiting list – as a matter of fact there were – who were, on the face of it, in a better position than ██████████ to be placed in the degree. They deserved consideration before ██████████ did, and the Rector did not have any regard to them, accepting the Registrar's word that his discretion was untrammelled. We consider this to be extremely unfortunate because it does discriminate against those applicants who did not know about the possibility of an RDP, and who were better placed to register for an MBChB. *We emphasise that the Rector had no power to consider anyone other than applicants for RDPs that were before him. The practice and process, rather than the Rector's conduct, is thus arbitrary.* The actual process in 2022 demonstrates this: ██████████ applied for an RDP on an ad hoc basis – as the guidelines permitted. Other applicants for RDPs were sent to the Registrar by the FMHS at a later date. Any discretion

exercised in the circumstances must inevitably be random and arbitrary. It is bad practice.

[124] Our view is that the Rector's conduct in placing his two nephews (albeit only by marriage) in the MBChB was based on a policy that was not transparent and this did not serve the value of accountability: he was not dishonest, for he bona fide believed that he was entitled to place his nephews in the MBChB programme and the RDP practice and guidelines permitted this. But it was inevitable that the placements would have been perceived to have been unfair. He should not have been placed in a position where he would be perceived to have acted impartially.

[125] We return to Professor Landman's view that fairness and equity were not served by these placements; they were not made transparently, in the first instance: only the Registrar was aware of the relationships, and not the broader SU community. Moreover, the Rector did not disclose his placement of ██████ to anyone in the FMHS when the furore grew around ██████ placement pursuant to the enquiries of ██████ and her parents. That aroused a sense of distrust among SU staff, as discussed above. It does not matter that ██████ would not have obtained a place in the MBChB in any event. There was no procedure that would have allowed the Rector to consider any other applicants for the degree. So he did not discriminate against her or anyone else. No one was non-suited. But the integrity of SU processes was called into question by the whole saga. The Rector should have appreciated that there was at least a perception of a conflict of interest when he considered his nephews for a place in the degree. He should have recused himself from exercising any discretion in their applications.

[126] We find thus that the Rector acted without realizing that there might have been a conflict of interest. He showed a lack of ethical insight in placing his wife's relatives in a degree programme without having regard to all applicants for the degree, which is inherently discriminatory. The problem is that the policies of SU permitted this and gave him no protection. There is no place for discretionary and *arbitrary* student admissions in a modern, democratic and accountable university. The practice of RDPs and the guidelines should be discontinued. We accordingly make the following recommendations to the Council.

## K. RECOMMENDATIONS

### [127] 1 *Provision for discretionary placements*

The general view of all SU staff whom we interviewed or who made submissions was that the Rector should *not* have any discretionary power to place applicants for degrees. However, there was a view that some discretion is needed in the selection process. It is recommended that no single person, on his or her own, should be able to select an applicant by the exercise of a discretion. Instead, there should be a committee of at least three people in each faculty who consider particular circumstances of all worthy applicants who do not meet the *mechanical* selection criteria. We recommend that the Dean of the Faculty (or his or her delegate), the Head of the Selection Committee in the Faculty and one other member of the Selection Committee should exercise a discretionary power in exceptional cases. If particular cases come to the attention of the Rector, then he or she should make recommendations to that faculty committee. This process should be made known generally and published on documents dealing with admissions criteria.

### [128] 2 *Reconsideration of structure of the Rectorate and revision of SU policies*

Both Professor du Plessis (the COO) and the Rector submitted to the Committee that there should be a reconsideration of the structure of the Rectorate. The Rector said that he had been advised that there may be a need for a senior legal counsel in the Rectorate. Professor du Plessis suggested a Provost was necessary. It is beyond the remit of this Committee to consider any restructuring of entities of SU. But we do recommend that the Rector's position be strengthened so that he is given stronger support in making decisions.

Secondly, the SU Rectorate, together with the staff of the Legal Services department, should review all policies of SU to determine their efficacy and application. All policies should be consonant with one another and with the values underlying the constitution. The Guidelines for RDPs are not consonant with the values of dignity and equality underpinning the Constitution. They allow for arbitrary and random practices. SU should revisit all policies to achieve consistency and fairness. In so far as this has not

yet been done, the processes for placements of students in residences must be reviewed. All policies and guidelines should be freely available on the SU website and in all faculty offices.

[129] 3 *Apologies*

The Rector has insisted that he has done nothing wrong in terms of the policies of SU and should not be required to apologise for his conduct. However, as we have found, he did make placements when there would be at least a perception of bias and conflict of interest. We consider that he should apologise for:

- (a) Making his decisions without disclosing them to the SU stakeholders, in particular in the FMHS, and not recusing himself in respect of relatives; this has given rise to a trust deficit.
- (b) Causing distress to the [REDACTED] and [REDACTED] families;
- (c) Causing the reputation of SU to be blemished;
- (d) Not appreciating the ramifications of placing relatives in a degree programme without regard to the institutional damage that might be caused.

Justice C H Lewis

Ms H Conradie

Ms Z Stuurman

**LIST OF ATTENDEES OF INTERVIEWS**

<b>DATE</b>	<b>TIME</b>	<b>TITLE</b>	<b>NAME</b>	<b>SURNAME</b>	<b>DESIGNATION</b>	<b>FACULTY</b>
16/05/2023	09H00	Professor	Elmi	Muller	Dean	Medicine and Health Sciences
16/05/2023	10H00	Doctor	Ronel	Retief	Registrar	SU Administration
16/05/2023	11H30	Professor	Nicola	Smit	Dean (Senate Member)	Law
16/05/2023	12H30	Doctor	Jan	Heunis	President of Convocation	SU Convocation
16/05/2023	14H00	Mrs	██████	██████	Mother of ██████	N/A
16/05/2023	16H00	Doctor	Therese	Fish	Vice Dean: Clinical Services and Social Impact	Medicine and Health Sciences
17/05/2023	09H00	Professor	Lesley	Le Grange	Department of Curriculum Studies (Senate Member)	Education
17/05/2023	10H00	Ms	Farah	Fredericks	Deputy Registrar	Medicine and Health Science
17/05/2023	11H00	Professor	Stan	Du Plessis	Chief Operating Officer	SU Management
17/05/2023	11H30	██████	██████	██████	██████ (██████ ██████ ██████)	██████
17/05/2023	12H30	Doctor	Leon	Schreiber	Convocation Member	SU Convocation
19/05/2023	09H00	Professor	Wim	De Villiers	Rector and Vice-Chancellor	SU Management

**ADDENDUM B****LIST OF DOCUMENTS RECEIVED BY THE COMMITTEE**

<b>DATE SUBMITTED</b>	<b>SUBMITTED BY</b>	<b>SUBMITTED VIA</b>	<b>DOCUMENT</b>	<b>NO. OF PAGES</b>
10/05/2023	PROF J HAMBRIDGE	E-MAIL	STATEMENT WITH CV	7
12/05/2023	N KRIEK	E-MAIL	STATEMENT	1
13/05/2023	C WING obo DR R RETIEF	E-MAIL	RESIDENCE AND PROGRAMME RDPs	4
13/05/2023	JG ADRIAANSE	E-MAIL	STATEMENT	2
14/05/2023	ANONYMOUS	E-MAIL	EMAIL WITH STATEMENT	4
14/05/2023	ANONYMOUS	E-MAIL	STATEMENT	3
15/05/2023	PROF VAN NIEKERK	E-MAIL	STATEMENT	1
15/05/2023	L JONKER	E-MAIL	STATEMENT	1
15/05/2023	C WING obo DR R RETIEF	E-MAIL	ADDITIONAL INFORMATION RE [REDACTED]	8
16/05/2023	A A DANIELS	E-MAIL	RDP's FOR ENGINEERING FACULTY	4
16/05/2023	DR R RETIEF	HAND	STATEMENT	5
16/05/2023	[REDACTED]	HAND	TRANSCRIPT OF CONVERSATION WITH DR R RETIEF	3
16/05/2023	A VAN WYK	E-MAIL	STATEMENT	4
16/05/2023	PROF E MULLER	BY HAND	STATEMENT WITH ANNEXURES	101
16/05/2023	DR J HEUNIS	HAND	SCHEDULE OF NEWSPAPER ARTICLES	34
16/05/2023	G SON	E-MAIL	STATEMENT	1
17/05/2023	J LE ROUX	E-MAIL	STATEMENT	2

17/05/2023	F FREDERICKS	E-MAIL	SURVEY: NON- ENROLEMENT WITH SU	21
17/05/2023	C WING obo DR R RETIEF	E-MAIL	REVISED RDPs (PROGRAMME)	1
18/05/2023	A VAN DER WESTHUIZEN	E-MAIL	STATEMENT	2
18/05/2023	ANONYMOUS	E-MAIL	STATEMENT	4
18/05/2023	PSVH HEYNS	E-MAIL	STATEMENT	1
18/05/2023	PROF T MADONSELA	E-MAIL	STATEMENT	5
18/05/2023	PROF W LANDMAN	E-MAIL	STATEMENT	3
18/05/2023	G C VAN EEDEN	E-MAIL	STATEMENT	7
18/05/2023	G STEYN	E-MAIL	STATEMENT	3
18/05/2023	M LE ROUX	E-MAIL	STATEMENT WITH 48 ATTACHMENTS	239
08/06/2023	M LE ROUX	E-MAIL	E-MAIL WITH STATEMENT	3
01/06/2023	M TREURNICHT	E-MAIL	STATEMENT	1