

# Report on racial bias by schemes against black healthcare providers released

The [interim findings](#) of the [Section 59](#) investigation into allegations by healthcare practitioners that medical schemes were discriminating against them based on race and ethnicity was released on 19 January, after an urgent interdict to delay the release was denied.



Image source: Getty/Gallo

The investigation was commissioned by the Council of Medical Schemes (CMS) in 2019 after the allegations were made by the National Health Care Professionals Association (NHCPA) and advocacy group, Solutionist Thinkers.

The chairperson of the independent review panel, Tembeka Ngcukaitobi, SC, presented the findings of the investigation on Tuesday. He said the panel was mandated to investigate two main issues: whether there is racial discrimination by schemes against black healthcare providers and whether black providers were being treated procedurally unfairly.

“The evidence presented by complainants and the schemes was important for the panel’s inquiry regarding how the schemes and administrators’ risk management systems, more particularly their fraud, waste and abuse (FWA) systems, worked in practice,” he said.

The panel appointed an independent specialist in statistics and data analytics as well as legal experts to assess the outcomes of the FWA investigation processes by the three main administrators – Discovery, Medscheme and the

Government Employee Medical Scheme (Gems) – and to provide assistance with the legal framework to test unfair discrimination and the principles of implicit racial bias.

The panel found that between 2012 and 2019, there was a substantial difference in FWA outcomes between black and white practitioners. It did, however, not find any evidence of explicit or intentional racial bias in the algorithms and methods that the administrators and schemes use to identify FWA.

“There is no explicit use of race in the analytics process. This does not mean that the process is ‘race-blind’. It may be the case that certain factors used, or areas prioritised are asymmetrically distributed by race and that this may produce racially biased outcomes.

“There is a substantial difference in FWA outcomes between black and non-black practitioners over the period from January 2012 to June 2019. Over this period, black practitioners were 1.4 times more likely to be classified as having committed FWA than those identified as not black. The probability that this distribution occurred by chance (ie, that there is no correlation between racial status and FWA outcomes) is for all practical purposes zero.”

There are clear differences in the scale of racial discrimination between the three medical schemes, with Discovery 35% more likely to identify black providers as having committed FWA, while Gems was 80% more likely to identify black providers as guilty of FWA. Discovery and Gems are the two largest medical schemes in South Africa,” the report said.

## **The interdict**

On Sunday (17 January), Gems and the Board of Healthcare Funders (BHF) went to court seeking an interdict against the public release of report, claiming it contained “scathing allegations and findings in relation to Gems (and others)”.

The parties said they not seen the interim report or the investigation’s terms of reference, nor had they been given an opportunity to comment on it, making the public release a contravention of the Medical Schemes Act.

In an answering affidavit, Ngcukaitobi said that from the outset the panel had made it clear that the process would be a public one and that the panel would be “accountable to the public as much as to the CMS and the parties”.

He said the applicants had made extensive submissions – written and oral – during the investigation and they knew from 27 November that the panel was going to publicly release the interim report. The urgency of their court case was “self-created”, he said.

The Pretoria High Court dismissed the application, saying that it lacked urgency.

## **Responses**

The Board of Healthcare Funders (BHF) said in a statement that it wanted to clarify the decision to interdict the report's release was to ensure that due process is followed in relation to the investigations by the independent panel, as well as the issue of the preliminary report by the independent panel.

BHF said that the panel did not implement the approved terms of reference nor the subsequent processes that it initially indicated would be followed.

“The BHF supports openness and transparency and the principles of natural justice that dictate that parties should be made aware of the findings made against them by an administrative body such as the panel and be presented with a reasonable opportunity to correct any errors or inaccuracies set out in any findings made by such administrative body prior to the publication of a report to the general public. This serves to ensure that unnecessary adverse inferences are drawn in relation to named parties to their detriment,” the statement said.

Dr Katlego Mothudi, managing director, BHF, conceded that the private healthcare industry is grappling with a high prevalence of fraud and corruption, which is exacerbated by lack of visible policing, gaps in monitoring systems, inappropriate consequence management processes, long-standing malpractices that have become entrenched as well as low levels of information sharing within the industry.

He said that several efforts are being made in the medical scheme industry to root out fraud, waste and corruption. In efforts to do so, BHF member schemes follow various processes to determine trends and anomalies in claims and use these to determine the outcome of claims. “We are of the view that our members have and had no agenda to intentionally discriminate any of the medical professionals, as we have a zero-tolerance to any forms of discrimination.”

Providing clarity on the interdict application, Dr Stanley Moloabi, principal officer of Gems says: “Our intention was never to ‘block’ the release of the report, but to request that due processes be followed in ensuring that affected parties had a view of the report before it was released to the public.

“Gems has a zero-tolerance to all forms of discrimination and pledges to implement corrective action where such remedial interventions are required and as recommended by the panel for the benefit of our members and healthcare providers.”

Meanwhile, Medscheme was also disappointed not to have eyes on the report before it was released.

The company maintains that its duty will always be towards its beneficiaries to validate and verify healthcare claims, and the company does not take this duty lightly. “Our fiduciary duty to safeguard funds entrusted to us remains to ensure that members and their dependants continue to receive access to healthcare treatment that is affordable and of the highest quality. This function has become even more critical in current depressing economic times, a function without which private healthcare would be substantially more expensive for everyone,” said Dr Lungi Nyathi, executive director at Medscheme.

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