SECTION 59 INVESTIGATION
Day 15
Minutes of the Inquiry

Session 1

Date	Monday, 27 January 2020
Time	10:07
Location	420 Witch-Hazel, Block A, Eco Glades
Chairman	Adv. T. Ngcukaitobi

Agenda Subject	Discussion
I. Call to order	Chair Adv. Ngcukaitobi called the inquiry to order at 10:07
II. Witness swore under oath	Chair called the motion to have the Adv. Nkosinathi Wiseman Bhuka, the Chief Legal Officer from Polmed to take an oath and to then begin with his presentation.
III. Introduction	Adv. Bhuka started off by apologizing on behalf of their PO, who was not able to make it due to some other commitments that were unavoidable and needed her attention. He stated that the inquiry was not of less importance, she just didn't have the time to make any changes to her schedule as the date for the inquiry had not yet been set. Chair accepted the apology and stated that Adv. Bhuka could proceed with the presentation if he had been fully mandated to do so. Adv. Bhuka affirmed that he was of certainty mandated to do the presentation
IV. Complaint	Adv. Bhuka started off with raising a concern about the ill-time manner in which they were informed or notified about certain things by the Secretariat. He explained that it was the reason why certain matters were not handled or attended to by the right people which resulted to delays. He also added that it would be for the same reason that their presentation would prove inadequate as they didn't have ample time to prepare themselves. He then pointed out that they had a certain document that had a timeline of events. Furthermore, he noted that he didn't want this to detract or delay the proceedings of the inquiry but he felt it necessary to voice out their concerns. In response to this, Adv. Ngcukaitobi stated that the document could be given to the panel if there three copies available for the panel, if not, the document would be given to the Secretariat. Adv. Williams then interjected and asked if Adv. Bhuka/ Polmed thought that there was any prejudice in the process and if any, how it could be remedied. In response to this, Adv. Bhuka affirmed that there was prejudice in the process and felt that it would be ideal if they would be given an opportunity to make written submissions for the purpose of amplifying and supplementing their presentation because they didn't have ample time to make adequate preparations for the presentation.

	Chair requested that Adv. Bhuka to get right into the presentation. Adv. Bhuka mentioned that he would do as per the Chair's request although he had more concerns that needed to be voiced out. Chair clarified that he was by no means overruling them, and that if he had more preliminary thoughts that needed to be expressed, he had the liberty to do so. Furthermore, Chair pointed out that his desire was for Adv. Bhuka to focus on his presentation which was the reason why they had come. Adv. Bhuka then stated that he would succinctly express his concerns with the purpose of adding the panel to know what improvements or corrective actions to take with regards to the process of the inquiry. He then pointed out to the process of how they were informed about the complaints that had been lodged against them to which they were required to respond to. He felt that there was information about Polmed that was shared with other schemes during this process of which was not supposed to have been. He also mentioned that the manner in which they were to respond to the complaints was not ideal. Adv. Bhuka then proceeded with the presentation.
V. Presentation	Adv. Bhuka started off by expounding on the composition of Polmed and mentioned that it is a closed scheme that was established in the year 1981 and was later registered with the Council in the year 2000. He then stated that the scheme only caters for members of the South African police force. He also pointed out to the fact that they have two benefit options which are primary attributes of the scheme. He then went on to say that the scheme has a 14 member board composed by 7 members who are elected by the members of the scheme and also 7 members who are elected by the national commissioner. He also mentioned that the board has sub committees namely, the Audit and Risk committee, which is chaired by an independent and non-elected chairperson. This committee gets reports on FWA management and other related issues. He continued to name the various sub committees and among them he mentioned that they also have the Clinical Governance committee, which looks at benefit designs and all related matters. He then added that they have the Legal, ethics, complaint and Disputes Resolution Committee which concerns itself with the ethical conduct of the leadership of the scheme and complaints. They also have an Investment Committee which concerns itself with looking after the scheme's investments and the compliance with related regulations. Then he stated that they also have the Human Resource Committee which deals with all HR related issues from staff to board levels. They also have an Executive Committee which he is a member of, and this committee is comprised by the Principal Officer Ms. N. Khauoe the Chief Legal Officer Adv. N. Bhuka, the Chief Financial Officer Mr. H. Du Plessis, the Chief of Corporate Services Mr. Sadiki, and the Chief Operations Officer Dr. J. Makkink.
VI.	**Business Model of the Scheme** Adv. Bhuka explained that the employer contribution toward the contribution pool of the scheme is 75% while the employees' contribution is 25%. **Membership Split** Adv. Bhuka explained that the scheme has continuation members which are specifically members who were in the force and might have retired making up 18% of the scheme's membership, and then there are serving members which are members who are currently in the force and they make up 82% of the scheme's membership.

	Outsourced Business Model Adv. Bhuka also explained that they have outsourced administration and managed care to Medscheme, optical management has been outsourced to PPN and medical emergency services have been outsourced to Netcare 911. Adv. Williams asked for clarification on whether the FWA management was outsourced through managed care or administration component. In response to this, Adv. Bhuka affirmed that the FWA management is outsourced through administration. Adv. Williams asked a follow-up question asking whether there was a contract between Polmed and Medscheme that outlines the guidelines or framework for the management and process of FWA. Adv. Bhuka affirmed that it was so. Adv. Williams asked if Adv. Bhuka could tell the panel what the contents of the contract was. In response to this, Adv. Bhuka started that they had prepared a slide as part of their presentation which addressed their relationship with Medscheme, but could not expound on or disclosed the contents of the contract clause by clause. However, they could make the contents of the contract available to the panel in writing. Adv. Hassim asked if the contract had been included in the bundle that was submitted to the panel. Adv. Bhuka confirmed that the contract was not part of the bundle. Furthermore, he stated that they considered that the contract contains information that is confidential and therefore could not make it available to the panel at that moment because it would be then subject to public exposure. Adv. Williams noted that she could not understand the reason why the contract could not be shared with panel. Adv. Bhuka responded by saying that it was because there could be information that is proprietary or commercially confidential which needs prior consideration of protection. Chair asked Adv. Bhuka to confirm if he had said that there was a part in the presentation that would explain or address the nature and structure of their relationship with Medscheme. Adv. Bhuka affirmed that it was so, although it doesn't give a detailed explanation and description of the term of the contract. Chair then made the motion that Adv. Bhuka should continue with the presentation. **Membership Profile** Adv. Bhuka continued with his presentation by expounding on the scheme's membership coverage. He pointed out that the scheme covers about 177 595 principal members, 111 033 adult dependents, 219 396 child dependents, and 508 024 beneficiaries. He also mentioned that their average age of principal members is 44.87, average age of beneficiaries is 29.21. Principal members that are younger than 60 years make up only 10.5% and beneficiaries younger than 60 years make up only 5.5%. Chair asked why the number of principal members younger than 60 years was that low because presumably, the police force has members who are young, fit and healthy. In response to this, Adv. Bhuka explained that the design of the scheme is what could allow this. There is a very low record of people exiting the scheme once they have joined because the scheme serves even those who have retired from the force. Chair asked if

	this was then the composition of the police force. Adv. Bhuka explained that he didn't have the mandate to answer that question or to make such conclusions. **The Economics of the Scheme** Adv. Bhuka explained the scheme's performance over time with the aid of a graph. The graph that he presented indicated that for the period 2000-2018 Polmed beneficiaries increased by 54.6% from 235, 940 in the year 2000 to 502, 705 in December 2018. The graph also indicated that during the same period, health inflation increased by 197%. What is also evident in the graph is that between the years 2000 and 2018, the State Grant only increased by 159% indicating a 33% Funding Gap. Adv. Bhuka also put great emphasis on the none-healthcare ratio, which he mentioned that so many financial resources are spent on none-healthcare expenses than in the medical needs and benefits of members. Chair asked for clarification on what these none-healthcare expenses were and why so much was being spent on these. In response to this, Adv. Bhuka explained that these involved costs of things like salaries, administration systems, and infrastructure. He stated that these were costs that are not extended towards meeting the members' health benefits and provisions. Chair asked if administration system costs which are a part of none-healthcare costs include fees paid to Medscheme for their outsourced administration services. Adv. Bhuka explained that he was not in a position to answer the question, however, it was certain that all administration costs were included in the none-healthcare costs aggregate. He pointed out that he was not certain as to how much exactly of the whole amount was allocated to administration costs. **Claims Analysis** Adv. Bhuka continued with his presentation and shed some light on the claims made in the past two years. Chair asked for clarification on what was meant by claims. He wanted to know if this was the total amount the scheme paid or received. Adv. Bhuka explained that it was the total amount the scheme paid out. Chair then also asked why hospitalization claim seemed to be high when what had been seen from the evidence was that the FWA risk was high with individual practitioners. Adv. Bhuka requested that they would be given a chance to amplify this later with a written submission. Chair requested that it would be ideal if they would include in the submission exactly how much they have been spending on FWA. Adv. Bhuka responded by saying that there was a slide that expounds on the FWA figures. **Polmed FWA Management Processes** Adv. Bhuka explained that the Board of Trustees has delegated the required function in combating FWA matters to Medscheme Forensics, an outsourced stakeholder that specializes in the prevention, detection, and investigation of healthcare FWA. Furthermore, he stated that Medscheme receives and manages the Whistleblower Hotline and Investigations. Adv. Williams asked if Polmed monitors Medscheme's activities in FWA investigations. Adv. Bhuka responded to this by explaining that the monitoring of Medscheme's

	activities is based on the policy that they have set out for FWA and the contract that they have with them and a mandate is given to Medscheme to do whatever the investigation may require. However, if that mandate reaches its limits, Polmed then does intervene. Adv. Williams referred him to the bundle before him and then asked if the scheme provided the mandate to Medscheme to write to providers in the name of Polmed. Adv. Bhuka explained that such would be clearly set and defined in the contract. All that he could ascertain was that Medscheme had been given the mandate to deal with and handle FWA, the details and limitations of that mandate would be outlined in the contract. Adv. Williams then referred him to page 91 of the bundle put together by the Secretariat. This was a letter written by Medscheme on behalf of Polmed. Adv. Bhuka replied that Medscheme was not given such an authorization and that such as the instance of the letter was an erroneous act. Adv. Hassim asked how many of the FWA investigations were conducted particularly on black practitioners. Adv. Bhuka responded to this by explaining that they didn't have a way to compute and determine this and therefore could not tell. However, he does not believe that this was a conscious process. Adv. Ngcukaitobi what was the sense of Polmed's ability to hold Medscheme responsible and also if they felt that Medscheme had too much power so much so that they can't really have any control over them. He made reference to their failure to produce the requested documents or information for the inquiry regardless of Polmed's request or instruction. Adv. Bhuka responded to this and affirmed that he was confident that they have leverage and control over Medscheme. He said that their failure to give them information on any kind is rather a reflection of their (Polmed) failure to follow-up on certain things and not Medscheme's resistance or insubordination. Adv. Williams asked if the contract that they have with Medscheme does instruct them not to discriminate racially. Adv. Bhuka replied saying that he wasn't sure of the exact contents of the contract and if it does address racial discrimination and how it is dealt with. Chair asked Adv. Bhuka to continue with his presentation but also added that at some point he would have to tell the panel about the mechanics of the contract. In his continuation of the presentation, Adv. Bhuka explained that they have an agreement with Medscheme as an administrator to help them with the management of FAW. Furthermore, he noted that they have sanctions which they apply when their intervention is required in the management of FAW. He also added that Medscheme is guided by the terms of the agreement and policy regarding what they may or may not do when dealing with FAW. He also pointed out that they have monthly and quarterly reports on the FAW processes from Medscheme and also monthly management committee meetings. Adv. Hassim asked what the contents of these reports are. Adv. Bhuka explained that these reports contain information about the kinds of cases being dealt with and their worth, also how many have been recovered or will/ can be recovered. The Audit and Risk committee uses these reports to focus on the monetary value of FAW cases, while the Legal and Ethics Committee focuses on the mechanism as to what the nature of the

	conduct would be. They look at whether there is a pattern FAW in a practitioner of specialist field. Adv. Hassim asked if the Legal Committee would be concerned with the manner of the investigation; whether there is fairness in how the investigation is conducted. Adv. Bhuka replied to this and said this was not quite so, however, it considers what actions would have been taken in order to recover FAW not particularly the manner in which an investigation would have been conducted. Adv. Williams asked if Polmed does mandate Medscheme to request for patients' files regardless of the confidentiality that comes with it. Adv. Bhuka responded to this saying that the scheme does allow Medscheme to do so as the scheme rules do allow this for the purpose of forensic investigation. He added that Medscheme does this within the ambits of the scheme rules. Adv. Williams then asked where in rules was he making reference to. He then referred them to slide 21 in his presentation. Adv. Williams then asked him to explain why he feels that this allowed them to request members' confidential information. Adv. Bhuka then read out the rule. He then explained that what they understood about the rules is that it grants them the right to request patient information provided that it is required for the purposes of the investigation. Adv. Williams then interjected and asked to give him what she understood about the rule as it was a matter of a play of words. She noted that it did not mean that they had the right to obtain information. Adv. Williams asked Adv. Bhuka to further address another part regarding the scheme's rules on page 90 of the bundle. At 11:49 Chair motioned that Polmed representatives would be given 10 minutes to go through the said document in order to be able to respond to Adv. Williams' question and an additional 30 minutes to finish their presentation. Adv. Bhuka then requested that they would discontinue the oral presentation and make a written submission instead. Adv. Ngcukaitobi said that they do welcome the supplementation of the presentation with a written submission, however, he still wanted them to continue with the oral presentation because it is vital for the investigation or inquiry. The inquiry resumed at 12:09 Adv. Bhuka expounded on page 90 of the bundle. He explained that it was a clause in the membership application form. He then continued with his presentation from slide 12 where he expounded on the FAW management process and how they receive monthly and quarterly reports from Medscheme. Adv. Hassim requested that the reports would be made available to the panel. Adv. Bhuka asserted that they would do as per the panel's request Adv. Williams referred Adv. Bhuka to his previous statement about guiding the process through sanctions, she then asked if they (Polmed) does guide the Medscheme forensic investigation process in any way, and if so how do they achieve this. Adv. Bhuka explained that they monitor the process through the application of sanctions and the contract agreement based on their accountability for what they do and if they are allowed to do it. However, they do not guide the process but only monitor it when Medscheme makes its submissions to them in the form of reports. Adv. Williams Asked

	to confirm and for clarification's sake if what Adv. Bhuka was that they have no control over what and how Medscheme does. Adv. Bhuka affirmed that it was so. Adv. Williams then asked further what the sanction policy was all about and how these sanctions were applied. Adv. Bhuka explained that these sanctions are imposed on providers when they (Polmed) have gotten reports from Medscheme, they include civil and administration sanctions. In the former, legal action is taken against the provider, and the latter, these could include claw-backs or suspension of funds. Chair asked who exactly were these sanctions imposed on. Adv. Explained that the sanctions are applied on both the service provider and member instances where they do not comply to the request for information or documents. Adv. Hassim asked how much time the service provider has to submit records and information. He replied that there was no set time. Chair referred him to an instance where a service provider was requested to supply records that date 3 years back in only just 10 days. He asked if this was mandated by them. Adv. Bhuka acknowledged that the time given was rather too short and seemingly unreasonable. Adv. Hassim made reference to the same letter that Adv. Ngcukaitobi had made reference to. She pointed out that the letter stated that if the service provider didn't provide the requested documents within the 10 days they would be placed under immediate suspension. She then asked if this was approved or mandated by them as well. Adv. Bhuka replied saying that it was not the case, and he doesn't know how and why Medscheme would come to that conclusion, neither was he aware of the conversations that might have been had prior to the said correspondence. Adv. Hassim asked if he then investigated the case after they had received the complaints. Adv. Bhuka responded by saying that they hadn't done so. Chair asked what their responses to this particular complaint was seeing that they had been given the time to review the complaints and respond. Unfortunately, Polmed had no answer. Adv. Bhuka said that he only received the said information on the 22nd of January which made it impossible for them to review and respond to the complaints. Chair responded by saying that that was untrue because according to their knowledge Polmed had received these documents last year. He also pointed out that such instances have been occurring for years but it seems like they are only being realized now, it seemed that someone wasn't paying attention or was incompetent and negligent. He questioned what the monthly or quarterly reports were for then or what purposes they were serving.
VII.	Adv. Ngcukaitobi asked Adv. Bhuka to respond to the allegations that service providers were threatened and coerced to sign AOD. Adv. Bhuka responded saying that this wasn't so because they use fair measures to do this, it is only where applicable and appropriate that service providers are asked to sign AOD because there would have been enough evidence from the investigation that they are indeed in debt. Adv. Hassim asked if the members are consulted with regards to accessing their confidential information. Adv. Bhuka explained that the scheme does do this first upon the application for membership and also when they contact them requesting this information and asking for their consent.

	Adv. Williams referred Adv. Bhuka to pages 67-68 of the bundle. She pointed out that Medscheme didn't in any correspondence made mention of the rules set by Polmed to get patient information but Adv. Bhuka claimed that Medscheme followed their rules and policies regarding this. She asked him to explain this. Adv. Bhuka said that when he spoke regarding the contract between them and Medscheme he mentioned their sanction policies and how they expect Medscheme to implement their FAW process. He then said he wasn't able to explain why they referred to the Act and not their set rules. However, he doesn't believe that this contravened with their mandate. Adv. Hassim asked Adv. Bhuka to show the panel where Section 59 stipulated that money would be demanded or deducted from service providers with regards to AOD. Adv. Read from the Act and then stated that their interpretation was that the Act allows that an arrangement would be made with the service providers. Adv. Hassim asked if the AOD is a settlement or a payment arrangement. He responded saying that it wasn't the amount of the loss the scheme would have incurred but a payment agreement. Chair then asked what the scheme's mechanism for getting money from the service providers. Adv. Bhuka was not entirely sure but he affirmed that there was a system in place which was primarily based on days of admission and the appropriate code of services rendered. Chair asked if any other system that does not align with what he had explained would be authorized by the scheme. Adv. Responded saying that it would never be and did not recall that happening. Adv. Hassim referred him to page 26 paragraph 6. She then asked if that was authorized by them and if not what penalties would be imposed on Medscheme. Adv. Bhuka explained that he could not agree to this as they had been advised by Medscheme on the contested matters and seen that they had not acted outside of their mandate. In instances where they had seen that they had acted outside of their mandate they would deal with it accordingly. Adv. Bhuka was then asked what the fee structure was. He then made reference to the fee structure outlined in the contract. Adv. Hassim then pointed out that there was a great need for the panel to have the contract.
VIII.	Closing Remarks Adv. Bhuka expresses his apologies regarding the inadequacy of the presentation and assured the panel that he would provide written submissions to supplement the presentation. He thanked the panel for the opportunity. Chair added that he hoped that the PO would have contributions to the submission. He also thanked Polmed for their presentation and extended his apology to Bonitas for taking their time and not starting on time.
IX. Other business	**None**

Adjournment: 13:53
Next session: the next session was to start at 14:20

SECTION 59 INVESTIGATION
Day 15
Session 2
Minutes of the Inquiry

Date	Monday, 27 January 2020
Time	14:24
Location	420 Witch-Hazel, Block A, Eco Glades
Chairman	Adv. T. Ngcukaitobi

Agenda Subject	Discussion
I. Call to order	Chair Adv. Ngcukaitobi called the inquiry to order at 14:24. He asked the BONITAS representatives to identify themselves and state who would be speaking on behalf of the scheme.
II. BONITAS representative identification	Mr Lee Callakoppen introduced himself as the Chief Officer of Bonitas Medical Fund and his colleagues Anisa Mohamed (Legal representative) and Vusi Makanda (FWA Senior manager employed by Bonitas Medical fund). He then stated that they would be handling their submission by way of a presentation covering various areas namely the governance and oversight, legal and operational with each area being covered by them
III. Oath	Chair asked each representative to take an oath with the exception of Adv. Mohammed who had the choice between an oath and an affirmation of which she stated she was fine with either.
IV. Bonitas' presentation	Chair handed the floor for them to begin their presentation. Mr. Lee opened by thanking the board for the opportunity to make their submission on the section 59 investigation adding that it was important for them to provide full context in order for the panel to arrive at a conclusion around the investigation. He then put forward a few housekeeping issues, not necessarily requiring a remedy but rather to formally bring it to the chair's attention: 1) When investigation commenced and when there was information shared, that they were one of the medical schemes that received confidential information on other schemes' members in their bundle of which they informed the secretariat on their concern associated with it. Adding that they made an assumption that the same information that was shared of Bonitas Medical Scheme was shared with other schemes. 2) The information they would be sharing and making a representation on to the panel was based on the guidelines provided that they could take on a format of submission in any format that they deemed appropriate and that

there was no information they weren't willing to share as long as they can engage with it and consider the confidentiality associated thereof.

He stated that though they would cover a wide scope of information in their presentation, some of the information they were providing would not be forthcoming in the presentation but that they would be happy to take any questions during or after the fact.

Mr. Lee then moved on to the Agenda:

- Introduction
- Bonitas overview on FWA
- Bonitas' understanding of the Terms of Reference
- Closing Remarks

Introduction:

Mr. Lee felt it would befitting to start off by stating the mission and vision statements of Bonitas Medical Fund:

Mission= To ensure the sustainability of the Scheme while meeting the needs of our Members.

Vision= To make quality healthcare more accessible and more affordable within South Africa and for the members they serve.

He then drew the panel's attention to clause Medical Schemes Act 57(6) of the Medical Schemes Act because they believed that the manner in which the investigation was being conducted and the impact it would have on medical professionals was important. Therefore he wanted to draw the panel's attention to the duty Bonitas' Medical Fund, their trustees as well as their service providers in terms the behaviour of how they conduct business and serving the best interest of their members.

Mr Lee asked the Chair if he could give an overview of Bonitas Medical Fund for the purpose of completeness.

Overview:

- Established in 1992 primarily for black civil servants.
- Successfully reinvented its image while staying true to its commitment to providing affordable healthcare for all South Africans.
- Approximately ¾ of the its members comprises of black people.
- As at 31 October, the scheme had 335,000 principal members and 723,000 beneficiaries, demographically classifying as 20% white, 5% unclassified, and 75% black.

He pointed out that this information would be relevant later on in their slide presentation.

	He proceeded by stating that on average a scheme's process is close to 2,486,000 claim lines per month and they issue close to 15,879 authorizations to various healthcare professionals and facilities. He noted that all the claims were paid within 30 days as prescribed by Medical Schemes Act Section 59(2) unless identified to be erroneous or unacceptable for payment due to non-compliance with provisions of regulation 5 of The Regulations of the Medical Schemes Act, which would be discussed in further detail. Mr Lee expressed that this information was important in relation to the governance and processes deployed by Bonitas as they act in due care, diligence, skill and good faith as per the duty referred to in his introduction. He went to express his conviction that South African healthcare ecosystem is fit to serve its members as good quality healthcare remained a priority for South Africans with escalating costs remaining a challenge the industry faced. To this he added Bonitas was focused in terms of addressing FWA. However, with healthcare costs consistently outpacing inflation, the challenge for the industry was finding the right balance between providing a high level of value and care for members, while managing costs effectively, which he mentioned were among the reasons for these high-cost drivers. He went on to say that abusive billing was not a unique challenge to the scheme or South Africa, but that it was rather an international one which manifests itself in the form of unethical and opportunistic servicing and overcharging. He added that this unwanted practice was always to the detriment of the collective risk pool of their Scheme members as well as individual members who unceremoniously find themselves running themselves out of benefits due to service providers unlawfully depleting their services, which is a dimension to be mindful of. Mr Lee stated that it was estimated that FWA constitutes about 23% of all medical scheme claims; other stakeholders estimated this to about 15%. He added that the numbers fluctuate between 15% to 23% depending on who you engage. Adv. Ngcukaitobi asked what Bonitas' number was. Mr Lee's response was that he could not quantify the full ecosystem at that point in time because of the information available, therefore it would be based on the type of activities on the type of disciplines they've engaged on, which he stated he would expound on later in his presentation and notified the panel that the information was also available on in their annual financial results which were published to members. He emphasized that it was of submission that it was a minority of healthcare practitioners that do not conduct themselves according to the standards expected of them adding that it was the fiduciary duty of Bonitas to ensure that members and dependents receive access to healthcare treatment that is affordable and of high quality.

	Mr Lee stated that medical schemes were required by law to have a solvency ratio which stipulates and regulates the medical schemes act to protect the interest of the members including Risk area and solvency isn't protected by addressing areas such as FWA and cost 14:59… The Fund has Fraud Waste and Abuse framework, policy on the process to be followed when FWA is identified and a policy on the actions which may be implemented where FWA is confirmed. • The main purpose of the policies is to ensure that a consolidated approach is followed in dealing with FWA whilst simultaneously protecting the Fund's reputation as we are dealing with our own stakeholders, namely members, HCPs and other external parties. • Upon finalization of the investigations conducted by our contracted service providers, the findings are discussed with the Fund through a formal FWA Forum chaired by the Fund.
	<u>Understanding the terms of reference:</u> Adv. Williams posed a few questions to Mr. Vusi Makanda with her first question being in reference to slide 13 in their presentation on their governance, also requesting the representatives to make the presentation available to the panel as they were not provided with copies. Her first question to Mr. Vusi Makanda was to clarify the oversight that they do/don't exercise over Medscheme. Adv. Williams asked Mr. Vusi Makanda to first clarify whether they allow Medscheme to write on their letterhead to service providers to which he responds affirmatively. Adv. Williams then followed up by asking why they do that. Mr. Vusi Makanda responded saying that the reasoning behind that decision was to identify and separate them from what Medscheme is doing. Further adding that the letterhead they gave Medscheme was what they wanted it to be as per the policy they expected Medscheme to apply on their behalf. Adv. Williams then asked if Bonitas approves the letters to which Mr. Vusi Makanda denied saying they do not approve the letters but rather send Medscheme a standard letter upfront to distribute to service providers. Adv. Williams asked if they signed off on a standard upfront letter that Medscheme is supposed to send and further asks what the letter was supposed to say. To which Mr. Vusi Makanda agrees and states that the letter content depends on the information that Bonitas would be requesting from a service provider. Adv. Williams then asked Mr. Vusi Makanda whether they had influence on what went in the letter to which he responded by saying they did not have influence.

	Mr. Vusi Makanda went on to add that what they had was the format/standard of what the letter should encompass. Adv. Williams asks if Bonitas will provide the panel with the Pro Forma letters that they has instructed Medscheme to send and Mr. Vusi Makanda agreed to do so to which Adv. Williams asked how many letters there were. Mr. Vusi Makanda stated that there were three that he could think of, however if there were more, they would provide them to the panel. Adv. Williams then asks if Bonitas mandates Medscheme to request patient information from the service providers. Mr. Vusi Makanda answered by stating that it's the processes they have instructed Medscheme to use, however they are not privy to all the information with regards to service providers. Adv. Williams then asked for a direct answer to her question. Mr. Vusi Makanda stated that when it comes to member information, it depended on what the information was and the purpose it was requested. Adv. Williams then asked if Bonitas mandates Medscheme to request confidential patient files and notes in order to verify that services were provided. Mr. Vusi Makanda explained that they do not mandate Medscheme as such but that they do request such information depending on the investigation their running. Adv. Williams repeated her question in need of a direct answer to which Mr. Vusi Makanda responded that they do not in fact mandate Medscheme. Adv. Ngcukaitobi asked Mr. Vusi Makanda if any of the standard letters provided to Medscheme authorized them to request confidential patient information. Mr. Vusi Makanda clarified by stating that the standard letters weren't that detailed, stressing that the kind of information requested by the service providers was a on a case-by-case basis. Adv. Hassim clarifies the question stating that the issue isn't the specific information that is requested in the letter but whether there is a pro forma letter allows confidential information to be requested. Adding to her question, she asked how they would verify what they're investigating and whether or not their pro forma letters had a section requesting confidential patient information and under what rules the administrator may request such information. Adv. Mohammed responds, stating that from her understanding when the investigation reaches a certain point which necessitates information on whether the service was properly rendered which may include clinical trials and other information, adding to which she states that it is not the administrator requesting the information, but the scheme.

	She went on to say it was the practicalities which they outsourced meaning that ultimately the scheme was accountable as well as exercises oversight as to what is requested and received from members. Adv. Williams asked Adv. Mohammed to clarify if they do mandate Medscheme to request confidential patient information. Adv. Mohammed responded affirmatively, saying that the scheme requests it. Adv. Williams then stated that there was a contradiction because the letters where written on Bonitas' letterheads by Medscheme which Bonitas had previously expressed that they do not approve. Adv. Williams advised Adv. Mohammed to speak to her personal knowledge and not based off her understanding of what Medscheme does. Adv. Mohammed explains that there are various stages in the investigation, usually beginning with pro forma letters, and as more and more engagements occur, progresses the type of correspondence gets more pertinent. She finished by saying it would be very rare to start off correspondence by asking for confidential information; adding that it is quite nuanced. Adv. Ngcukaitobi interrupted Adv. Mohammed requesting a direct answer. Adv. Mohammed continued by stating that her understanding was that the information would then be brought to the fraud forum and debated before it is requested before confidential patient information is specifically given; therefore it is on a case-by-case basis. Adv. Williams then asked who sits on the fraud forum. Mr. Vusi Makanda responded that he chairs the fraud forum and Medscheme along with other stakeholders formed the fraud forum. Adv. Williams stated that she wasn't suggesting a blanket approach and requests for clarification on whether Medscheme is mandated to request this information to which Mr. Vusi Makanda agreed that they do. Adv. Williams follows up her question by asking on what basis they mandate Medscheme. Mr. Vusi Makanda explains that it would be on the basis on the case itself and that there's a background investigation done prior to the information being requested and further explains the difference between confidential information and any other information. Adv. Williams interrupts Mr. Vusi Makanda and reminds him that one of the issues is legitimate claims made by service providers around protecting the confidentiality and they can't get consent from their members. She went on to state that a deadlock is formed when schemes request confidential information and providers cannot get consent thereby causing schemes to place providers on indirect payments and suspend payments which creates a difficulty.

	Adv. Mohammed answers stating that member consent regarding the accessing of clinical information is given in the membership form because there are many other instances where consent is needed such as authorizations. She then referred the panel to booklet nine of the HPCSA which sets out professional conduct. She then likened the members' information to legal privilege, adding that it that it would be absurd for a member not to sign the consent form. Concluding that the ultimate legal test is that the member has consented therefore she failed to see where the prohibition came in. Adv. Hassim assists by referring them to an example on pg. 468 of the panel's bundle, which is a letter of Bonitas. The representatives note that they are not in possession of a copy of that page. Adv. Hassim suggested that they move on with the session while the document is being located. Adv. Ngcukaitobi encourages Mr. Lee to proceed with his presentation, reminding him that he was still speaking on the terms of reference. Mr. Lee stated that he wanted to set out the importance in terms of the various regulations as covered. He continues with his presentation explaining that the above mentioned policies have been adopted by Bonitas to ensure that they act without fear, favour or prejudice and rely solely on the facts when deciding on FWA matters. He adds that their FWA policies and frameworks will become clearer when they share they share them with the panel confidentially. He went on to say that it could go on record that they constantly strive to act fairly, transparently and within the boundaries of law at all times. Adding their internal and external auditors monitor and apply these processes consistently; therefore as a scheme they aren't providers, judge and jury. Mr. Lee further provided that they have oversight from their independent auditors adding that any deviation is reported and dealt with in accordance with the applicable Charter. He went on to explain that as stated in the sanctions document, Bonitas reports aberrant healthcare practitioners to the regulatory bodies and to the law enforcement agencies and that from beginning 2016, Bonitas had reported 62 cases to the Health Professions Council of South Africa and 19 cases to the South African Pharmacy Council; Of the 62 HPCSA reported matters only 11 cases have been finalised with various outcomes. He added that cases reported to SAPC have not been adjudicated on. Mr Lee went to say that they had reported over 44 cases to the South African Police Service and 7 healthcare practitioners have been found guilty of fraud by the various

	courts around the country. He noted that the sentences imposed vary from prison terms, fine and suspended He explained that they followed due legal process and arriving at the scourge of FWA. He then moved on to address the particular question that was raised in terms of the terms of reference. He noted that the scheme had taken a view to cooperate with the panel without jeopardizing its position in matters that may be served before the courts or any lawful tribunal at this particular point in time. Mr Lee stated it was important to note that the scheme submission to the panel and response to the complaints are made without prejudice and that the scheme reserves its rights to end it should it become necessary. He further added that they would however, like to respond formally to the questions raised for the sake of clarification. Bringing up the question that was raised by the tribunal being: • **Medical schemes conduct profiles based on racial terms and only Black and Indian doctors are audited.** Mr Lee responded to this question by saying that Bonitas refutes that claim and that it engages in any form of racial profiling for purposes of identifying possible incidences of FWA, which he hoped the panel had recognized during their presentation. Adv. Ngcukaitobi then asked if they had had a look at the racial statistics of the people investigated on their behalf either by Qhubeka or by Medscheme. Mr Lee admitted that they had not, for the reason that they conducted themselves based on practice numbers and that he had satisfied himself as Principal Officer and the management team in that they have relooked at the process followed and the tools utilized by the service providers which is why they had not directly looked at the racial profiling or the race composition of the doctors that were subjected to FWA. Adv. Ngcukaitobi asked how then they would know that there are no racially biased outcomes if they hadn't asked for the information. Mr Lee reiterates that what they investigate and what they established based on the merits of the behaviour associated with Fraud, Waste and Abuse, referring back to the beginning of his presentation where he stated that 75% of their members are black. Adv. Hassim asked what that had to do with the service providers. Mr Lee responded by saying that the point he was trying to infer was that they would utilize doctors of similar racial balance, expressing that it was an inference and not a fact. Adv. Ngcukaitobi then asked how they could refute racial outcomes without having done any enquiries with the service provider that does the investigation on their behalf. Mr Lee responded that they had investigated with an approach on regulation and legislation and their approach was factually based on that.

	Adv. Ngcukaitobi then asked how they could then draw inferences that black patients would go to black doctors without doing any investigation. Mr Lee repeats that it is not based on any statistical research but that it is an area that requires further investigation. Adv. Ngcukaitobi pointed out that they have done no investigation and yet stated that there is no racism followed by a racially loaded statement. Mr Lee withdrew the comment and reiterated that his point was that Bonitas as well as their service providers and their practices in business are not racially based. Adv. Hassim states that there are two things emphasized that do not come to their assistance which have been accepted already, being: 1) There's no question that FWA must be investigated and that the impact of FWA is to the detriment of the members and that it is a duty on the medical schemes to protect their member's interests and it is a constitutional obligation to ensure that proper health services are provided. 2) As Bonitas they have continually made reference to practice numbers (which they panel had not yet disputed) and that they don't look at race for the way in which they embark on their investigations. With that being said, Adv. Hassim posed the question to them: How do you explain a racially biased outcome if you have not looked at your service provider and what the outcome is in terms of investigations in relation to Bonitas itself? Mr Lee notes that the panel and themselves view the matter similarly in terms of what is not in dispute. Adv. Ngcukaitobi interrupts Mr Lee urging him to directly answer the question posed to him. Adv. Lee answers saying they have satisfied themselves in terms of their governance and processes and take the point from the panel that they require more intensive review from a racial perspective from the service provider, of which they hadn't gone to that extent nor were they expected to present that particular answer. He went on to express that he had written to the secretariat over the last few weeks requesting the particular questions to be answered so as to adequately prepare for. Therefore they as a fund team had prepared based on themselves, charging themselves of a fiduciary duty to ensure that no such actions take place. He then confirmed that he had taken note that the question required a factual based answer and that they would probe that further as a scheme. Adv. Hassim added that the duty resting upon them wasn't only to investigate FWA in the interest of their members but that it was also to ensure that their company isn't perpetrating racial discrimination either directly or through their agent. Mr Lee agreed with Adv. Hassim and reiterated that they don't condone any racial discrimination as a fund; referring them to their closing statement in which they have

	committed to taking the necessary action where it's found to be the case by a service provider. He added that their structures, policies and frameworks in terms of the current practices are geared towards ensuring that that doesn't take place. Adv. Hassim expressed that it may not be and that they wouldn't know if it's actually effective because they hadn't looked at what it produces. Mr Lee affirms that he has taken note of the points offered by the panel. Adv. Ngcukaitobi raises the questions adv. Hassim wanted to pose in reference to the letter on pg. 468. Adv. Hassim points out that she is referring to the pages flagged in red, specifically the one dated the 3rd of July 2018 to a service provider which reads: We've undertaken an analysis based on our provisional desktop audit to date. It's become necessary to verify the validity of certain services claimed on behalf of our members. Find here under a list of the members and the services. We request information in relation to a list of 13 patients, their blood request forms and the copied of the results of the blood requests that must be provided as per the advice of HPCSA; you should obtain the necessary consent from the above patients to share their clinical records with our unit. Adv. Hassim then asked how it squared with what the representatives were saying that they didn't need to obtain consent because it had been provided already. Advocate Mohammed requested for a few moments while she went through the other ones. Adv. Hassim reiterated that there were two questions in relation to the letter read. One being in relation to the consent and they stated the service providers must get through the members and the second one being, advising the service provider that payments are currently suspended, thereby suspended it while attempting to verify the claims. Adv. Ngcukaitobi suggests a 10 min adjournment because the meeting was meant to end at 16:00pm. **Session adjourned for 10 min: 15:49**
	Session resumes at 15:59 Adv. Ngcukaitobi resumes the session asking to focus on the question by Adv. Hassim. Adv. Mohammed responded by stating that she had consulted with clients and administrative staff very briefly and she was informed that this hadn't been a standard letter, but that what had happened in that interaction was there had been an ongoing debate in which the service provider claimed he did not have the right, notwithstanding

	the scheme ascertain that they did not have the consent of the member; that he did not have the right independently to supply the information sort. And that as a result thereof, that paragraph seemed to have in into various iterations of ongoing reminders and correspondents. She therefore concluded that it was not a standard letter, peculiar to that situation. Adv. Hassim reads the sentence which says: The HPCSA has advised that the service provider should get the consent from members. Adv. Hassim adds that, they are the custodians of the ethical code for the service providers. Meaning their interpretation is that individual consent has to be obtained from the members and the blanket concern they have provided is insufficient. Adv. Mohammed stated that she could not speak to that, However what she stated that what she gathered from the booklet was the blanket concern was sufficient for the type of relationship the scheme had with its members. Adv. Ngcukaitobi calls to proceed with the slide presentation. Adv. Williams asks Bonitas to identify where in their rules the patient consents to disclose personal information. Adv. Mohammed answers that it's on every membership sign-up which they will make available to the panel. Adv. Williams then asks Adv. Mohammed to identify where her statement came from in booklet nine of which Adv. Mohammed agrees. Mr. Lee continues with his presentation referring back to the terms of reference: **Medical schemes demand patient confidential records of their members when verifying claims**. • The Fund respects the confidentiality of the patient's information disclosed with the treating doctor. • When claims are submitted, it is done with the ICD-10 code detailing the diagnosis and the treatment plan to be employed. • Motivation for preauthorization contains very detailed clinical information about the surgery and/or treatment of the member. • In order for the Scheme to process claims (as contemplated in Reg. 5) or to assess whether a member is entitled to benefits sought, implicitly, the Scheme must have access to reasonable clinical information. Mr. Lee refers back to a question asked by the panel earlier concerning medical schemes conducting illegal probes and conducting entrapment techniques, with Bonitas' response being that they do not conduct any illegal probes in any form of entrapment with the schemes services providers confirmer the same except that they do conduct unannounced visits to healthcare professionals which they went on record to provide when they engaged with Bonitas on the subject matter.

	He went on to address the next question asked which was that Medical schemes do not report healthcare providers to the regulatory bodies and law enforcement agencies. The scheme response was on Zero-tolerance on FWA matters and has reported the errant practitioners to both SAPS and other regulatory bodies as stipulated in this submission above; The Fund also has a program through our managed care that is aimed at rehabilitating HCPs identified as outliers in the clinical protocols where such rehabilitation is warranted. The challenge the faced as a fund was ensuring that these cases are investigated promptly. Finally, the question of Medical schemes unlawfully bully healthcare practitioners to sign Acknowledgement of Debts ("AODs") without any legal basis. He responded formally in that regard is that no person is coerced or bullied into signing AODs that HCPs are invited to the meetings and advised to bring legal or any other representation to such a meeting. He stressed that healthcare providers are informed of their rights to legal representation. **Closing remarks:** Mr. Lee read the closing remarks as follows: The industry of fraud, waste and abuse to the benefit of our members and all South Africans; Bonitas has an escalation process where any person who feels aggrieved by our service providers while conducting investigation on fraud, waste and/ abuse, can escalate the matter to the Fund for intervention; We further wish to submit to the Panel that we remain committed in working with the stakeholders to rid the industry of fraud, waste and abuse to the benefit of our members and all South Africans; Bonitas remains committed to the Constitution and other laws of this country. We reject any form of racial discrimination. Mr. Lee concluded by reiterated many persons who have sought to defraud the scheme have faced the interest of justice and urges the panel to weigh up the interest of justice in the interest of the consumer and rejects any allegations that the scheme indulges in fraudulent or discriminatory practices. Mr. Lee stated that they had taken conscience of the points raised the panel and that they would take it further. He further added that they do not condone any form of discrimination and are committed to address any finding that may be forthcoming from the panel.

	Adv. Ngcukaitobi asked how they determine the amount to be recovered. Mr. Lee answered saying it was based on the analysis of where there have investigated and a factual computation. Adv. Ngcukaitobi then asked how the amount was computing. Mr. Lee responds that it is done through the claims adjudication process that their service providers go through; he added that it is a complicated process that he is not an expert in. Adv. Ngcukaitobi asked how much they paid in claims annually and how much was ascribable to FWA. Mr. Lee noted the two points and suggested that the other two question be answered while he calculated the amounts. He pointed out to the chair that the amounts would be for 2018. Adv. Mohammed stated that she had a response to Adv. Williams' question referring to their membership form and the HPCSA handbook. Adv. Ngcukaitobi asks how long doctor's should keep records for. Adv. Mohammed believed it to be six years. Adv. Ngcukaitobi then asked if they followed their own guidelines or those of the HPCSA of which Adv. Mohammed confirmed that the used the HPCSA's guidelines. Adv. Williams then posed a question to Mr. Vusi Makanda on how Bonitas interacts with Medscheme and how much oversight they had with Medschemes' conduct and how many people he managed in his team. Mr. Vusi Makanda responded explaining that He was solely responsible for all FWA matters at Bonitas and that Medscheme comprised of about 54 people, also that they have a meeting fortnightly. Adv. Ngcukaitobi asks for clarification on how this is administered and whether the conversation in general fortnightly. Mr. Vusi Makanda Clarifies that they have an in depth meeting fortnightly and that he handles cases that are brought to his attention and pointed out that he has access to Medschemes' system as well and that they analyze about 100 cases per month per analyst. Added that they discuss 10 to 20 cases per meeting depending on the prior agreed upon volume. Adv. Hassim asked if the cases discussed in the meetings are those of particular interest to Mr Vusi Makanda of which He agrees. She then asked if he knows the particular service providers who are implicated in those cases of which he responded affirmatively.

	Adv. Williams asked if he recalled the 23 cases with complaints against Bonitas of which he agreed. Adv. Hassim then asked Mr Vusi Makanda if he could provide monthly or quarterly reports to the panel of which he also agreed to do. Mr. Lee responded with the calculated amounts of R13.9 Billion in claim valued paid annually and FWA since they started in 2016 of about R297 Million rand and recovered only R84 million for the financial year 2018. Adv. Ngcukaitobi asked if Medscheme is entitled to a percentage of that amount of which Mr. Lee was advised by his associate that the information was subject to confidentiality.
V. Conclusion	Adv. Ngcukaitobi adjourns thanks the scheme and adjourns the meeting

Adjournment: Adjourned at 16:23
The next inquiry date was 28/01/2020 at 10:00