

SECTION 59 INVESTIGATION

In the investigation between, *inter alia*:

SECTION 59 INVESTIGATION PANEL

Investigator

and

MEDSCHEME HOLDINGS (PTY) LTD

Respondent

MEDSCHEME'S FURTHER SUBMISSIONS IN REGARD TO NEW DEVELOPMENTS SINCE THE PUBLICATION OF THE SECTION 59 INTERIM REPORT

1. In response to the ruling handed down by the Section 59 Investigation Panel on 6 July 2023, Medscheme provides these further submissions which, in the main, summarily address the developments and further steps taken by Medscheme in respect of, *inter alia*, the development of its FWA systems and processes since the publication of the Interim Report in January 2021.¹
2. Further, these submissions briefly address the submissions delivered by the various participant medical aid schemes as part of the Section 59 Investigation Panel's legal argument hearings, which were held in June 2023.
3. In respect of the latter submissions, and with the aim of not burdening the Panel with further lengthy and/or repetitive submissions, it is to be noted that Medscheme does attempt to, or intend to, deal serially with all the allegations and contentions made by the

¹ Given Medscheme's non-receipt of the ruling on 6 July 2023, Medscheme having been omitted as a recipient thereof, Ms Shannen Etter of Lawtons Africa confirmed by email on 14 July 2023 that Medscheme would be permitted to file its submissions on or by 21 July 2023.

participant medical aid schemes in their respective written legal submissions. Medscheme addresses only those aspects of the various submissions which it is of the view require debunking.

4. Accordingly, any factual allegation(s) which Medscheme does not expressly address in these further submissions are to be assumed to be expressly denied where inconsistent with the contents of Medscheme's various submissions to the Panel to date, namely:

4.1. Medscheme's Response to the Interim Report dated April 2021;

4.2. Medscheme's Heads of Argument: Legal Argument in respect of Procedural Irregularities in the Section 59 Investigation Process (and supporting legal authorities) dated 20 June 2023; and

4.3. Medscheme's Further Submissions following Legal Argument Hearings dated 7 July 2023.

5. Medscheme further relies on the evidence which it presented at the Section 59 Investigation hearings together with the reports prepared and delivered by its expert witness, Dr Michael Bergh, which conclusions correlate to those found and stated by the Panel's expert witness, Dr Zaid Kimmie, in his concluding remarks of his final report dated October 2020:

"The report by Dr Kimmie states that no additional variables were explored in the determination of the risk ratio for FWA outcomes. This report extends those calculations by introducing a number of variables, namely the source of the indication to launch an investigation (whistle blower tip-off or IFM score), the issue of juristic entities and their racial classification, the appropriateness of representing each provider by a count of 1 in the calculation of the risk ratio and hence the recommendation to weight by claim lines, issues related to auxiliary providers, providers who are on or off network, and providers who are paid directly or indirectly.

In general, these factors all result in a reduction of the risk ratio, and when compounded the risk ratio is reduced in some cases close to or below 1.”²

A. DEVELOPMENTS TO MEDSCHEME SYSTEMS AND PROCESSES SINCE PUBLICATION OF THE 2021 INTERIM REPORT

6. Medscheme summarizes its developments and further steps taken in respect of, *inter alia*, the development of its FWA systems and processes, between 2021 to date, as follows:

NO.	DATE	IMPROVEMENT / EVENT SINCE JANUARY 2021
1.	March 2019 – November 2022	<p>During the course of March 2019, and thus prior to the release and publication of the Interim Report, Medscheme committed to aligning its practices, particularly those relating to FWA investigations, in accordance to was to be agreed to be best industry practice.</p> <p>In this regard, the industry wide FWA Charter, the FWA Code of Good Practice and the FWA Tribunal Rules were signed by industry stakeholders, which included Medscheme, on 24 November 2022.</p> <p>The principal objective of the FWA Charter is to reach a common understanding and purpose between the parties thereto to actively strive towards improving the quality and reducing the cost of private healthcare through combatting FWA and further, to promote and strengthen measures to prevent and combat healthcare FWA more efficiently and effectively.</p>

² Extract from Dr Michael Bergh report on “*Adjustments to Medscheme’s Risk Ratio using Additional Variables and IFM Score Trends for relevant Variables*”, 7 February 2020, para 5.

		<p>The principle objectives of the FWA Code of Good Practice is to establish guidelines for minimum standards of good practice for prevention, detection, investigation, restitution, and penalisation methods to mitigate and manage Fraud Waste Abuse.</p> <p>Medscheme attended the industry signing ceremony at the CMS in November 2022, demonstrating its commitment to participating in the journey towards curbing FWA in the healthcare industry. In summary, the FWA Code of Good Practice will govern the conduct of various stakeholders, including Medscheme, in dealing with matters of FWA and disarms arguments attacking procedural fairness to avoid dealing with merits.</p> <p>A follow-on from the FWA Summit and the signing ceremony was that the signatories to the FWA Charter would put subcommittees in place to look at some of the issues raised, such as:</p> <ul style="list-style-type: none">▪ Achieving Uniform Coding standards to remove complexity and the existing opportunity for “code unbundling” / “up-coding” / “code farming”;▪ Defining Fee-for-Value (moving away from current fee-for-service model), which should drive the right diagnosis and treatment behaviours; and▪ An Industry Code of Good Practice for forensic audits and investigations, so that there is more alignment and standardisation in the industry and to ensure best practice principles are upheld.
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		<p>The majority of these endeavours have now been achieved. Medscheme continues to strive to ensure that the issues since raised are addressed and where possible, Medscheme’s own measures are addressed to improve the issues experienced by health care providers.³</p> <ul style="list-style-type: none"> ▪ A copy of the FWA Charter can be accessed from the following link: https://www.fwasummit.co.za/wp-content/uploads/2019/03/Draft_Industry_Charter_2019-03-15.pdf ▪ A copy of the since signed FWA Code of Good Practice can be accessed from the following link: https://www.fwasummit.co.za/wp-content/uploads/2022/11/Draft-FWA-Code-of-Good-Practice-Clean-Version-10112022.pdf ▪ A copy of the FWA Tribunal Rules can be accessed from the following link: https://www.fwasummit.co.za/wp-content/uploads/2022/11/FWA-TRIBUNAL-RULES-For-Adoption.pdf
2.	Initial membership from about 2018 continuing on an annual basis to date – 2023	<p>Further to the above, Medscheme joined the Healthcare Fraud Management Unit (“HFMU”), being a unit of the BHF, during or about 2018 and has participated in the assistance of the HFMU to date. By doing so, Medscheme has committed to open and transparent sharing of information with the medical industry as a whole and has since begun working towards establishing more entrenched measures to drive best practice, particularly in the FWA space.</p> <p>The HFMU is an information and resource sharing group which enjoys the participation of the majority of medical schemes, administrators, management and administration entities and some insurers, which include Medscheme. The core focus of the HFMU is to facilitate a unified approach with regards to fraud</p>

³ See <https://www.fwasummit.co.za/wp-content/uploads/2021/03/FRAUD-CASES-APRIL-2020-FEB-20213-Read-Only.pdf>.

		<p>in the medical schemes environment. This is achieved by sharing information regarding fraud, over billing and over servicing in order to minimise fraud across the industry and to protect medical schemes from healthcare providers and medical scheme members who shift their wrongdoings from one medical scheme to another once "caught out".</p> <p>Thus far, the HF MU has participated in and/or shared information in respect of 660 FWA investigations, having held 129 million consultations with various stakeholders in this regard.</p>
<p>3.</p>	<p>Development throughout the course of 2021 and implementation as at 1 April 2022</p>	<p>Given the issues raised in respect of Medscheme's previous FWA flagging system in respect of FWA cases and its respective outcomes, which criticisms Medscheme has since considered and takes seriously despite still taking issue with the Section 59 Investigation and its interim findings, Medscheme has since elected to develop and implement a new FWA flagging / analytical system, namely, DOTS, to replace the previously utilized IFM system. The IFM system has since been decommissioned by Medscheme.</p> <p>DOTS, which is an in-house developed system and for which further development thereof is still underway, incorporates artificial intelligence utilizing neutral information with no indicators of racially identifying information.</p> <p>The DOTS tool and system focuses on behavioral billing patterns, using machine learning and artificial intelligence to predict the risk of irregular claims. The computational power of artificial intelligence allows for the accelerated scoring of significant volumes of claims data within milliseconds, and enables Medscheme to now, even more accurately, predict fraudulent or</p>

		<p>abusive behavior using thousands of algorithms to detect anomalies for further investigation.</p> <p>In the use of artificial intelligence technology as part of the developing world, Medscheme strongly enforces elements of responsible artificial intelligence practices in how it implements the technologies, including DOTS (and previously, IFM). These elements satisfy attributes of model fairness, justifiability, counterfactuals, and causal analysis, which is in turn supported by an AI scorecard to ensure ethical outcomes. To ensure such outcomes, foundational data management practices around Medscheme’s datasets and platforms promote security, efficient operations, observability abilities, data quality and discoverability of data.</p> <p>Should the Panel require further information in respect of the newly implemented DOTS system and any differences in outcomes in this regard, Medscheme remains available to provide a detailed analysis in this regard together with its expert witness, where the Panel allows for such an opportunity.</p>
4.	<p>Development throughout the course of 2021 and implementation as at 1 April 2022</p>	<p>In line with the implementation of the new DOTS FWA flagging / analytical system, Medscheme also took the decision to adopt a new automated FWA case management system.</p> <p>The new case management system now has automated controls implemented to improve, <i>inter alia</i>, the case management overall including the duration of FWA investigations as well as quality control on communications within a FWA investigation. By way of example of the new case management process, the following aspects have been updated and automated:</p>

		<ul style="list-style-type: none">▪ Practice details (such as email address/es, details of the owner of practice etc.) are now populated from Nexus <u>only once a member has already been flagged for FWA via the DOTS systems</u> therefore, ensuring that we use correct contact details when conducting FWA investigations and eliminating human or finger error in communications with members. ▪ Audit trails – A full history of audit trails in respect of a health care provider identified or flagged for FWA has now been automated. The new system also allows for track changes and version control of documents submitted by the investigating team or the relevant healthcare provider/s. ▪ Approval levels – Certain functions, for example, the sending of a loss assessment letter to a healthcare provider, require managerial assessment and approval <u>prior</u> to further steps being taken in the furtherance of the FWA investigation in question and this approval is documented on the case management system. ▪ Case closure – If a case needs to be closed, case closure should be selected on the new system and comprehensive notes must now be added to the case notes <u>before</u> routing such potential closure to an experienced manager assessment and approval. The manager in question, upon assessment of the case file and the closure notes which are all automated and electronic, will either approve the case closure or route back to a FWA analyst if more information is required.
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		<ul style="list-style-type: none">▪ Audit phases – There is now an approved process in respect of each phase of an audit, which is populated in the design of the automated process, thus ensuring that the correct steps are followed and in their appropriate order at every step of the audit process. A second check and balance in this regard is the need for approval by not only the system but also by an experienced FWA manager. In essence, with the new automated case management system, certain steps cannot be missed as the system will block the progress unless a deviation to a process is approved by the relevant FWA manager with a specific reason documented in the case file. ▪ Communication templates – The new case management system now uses the most up to date Medscheme communication templates, which have been loaded on the case management system and where required. The communication templates are now also auto-populated by the case management system with the date, FWA analysts details etc., which further ensures accuracy and accountability in the FWA investigation process. ▪ Merit approval in FWA investigation process – After the completion of the risk exposure assessment as part of Medscheme’s FWA investigation process, the FWA analyst needs to send their case file along with their preliminary findings to an experienced FWA manager in order to proceed with the audit or close the case. ▪ Pre-communication approval – Based on the new case management system, letters to health care providers regarding a FWA
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		<p>investigation cannot be sent to a practice until the letter and relevant annexures are approved by an experienced FWA manager. The FWA case management system is able to read the note type that the manager adds before allowing the case to route back to the relevant FWA analyst. The new system also now provides for pop-up errors in the event that the relevant notes are not added or have been added to the case file but in the incorrect category.</p> <ul style="list-style-type: none">▪ Validation checks – Various validation checks are now automated with the new case management system. For example, the loss assessment calculated =< claim exposure or the sum of total claims exposure for all schemes should add up to the exposure for the consortium.▪ Case management functionality – Various dashboard/visibility functions have been implemented as part of the new case management system, for example, the flagging of cases where no progress has been made in 30 days for focus by an FWA analyst or for the provision of an AOD document to the health care provider where no payment was received. The functionalities assist with efficient case management and good governance in the FWA investigation process.▪ Red flags – As briefly mentioned above, the new case management system automatically highlights red flags in the FWA case management investigation process. By way of example, when the ageing of a case exceeds the ideal per case management process i.e., in some instances, 30 days without any further action, this is now
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		highlighted by the system for urgent intervention and is also escalated to Medscheme’s management by means of an alert.
5.	Initially updated in 2021 and remains an ongoing process of improvement and refinement within Medscheme	<p>In respect of Medscheme’s FWA investigation processes, the internal standard operating processes utilized by Medscheme (i.e. Medscheme’s ‘policy’ on how FWA investigations are to be conducted) has since been updated to ensure, <i>inter alia</i>,:</p> <ul style="list-style-type: none"> ▪ A significantly greater deal of leniency which is now built into the Medscheme FWA investigation processes. By way of example, Medscheme now allows for various extensions for the submission of supporting documents in respect of FWA investigations. This was always done in practice, however, the processes did not stipulate this specifically. ▪ The time period of the FWA audits is now limited to 3 years and where possible, shorter periods. For example, where it is clear that the red flag identified only relates to claims submitted for the past 6 months, Medscheme focuses its review on only the past 6 months and specifically requests supporting documentation from the health care provider in question for a much more limited period of time. ▪ The overall improved governance on every step of the FWA investigation process.
6.	Initially reviewed following the	Following the publication of the Interim Report, Medscheme elected to undertake a review of all of its FWA communication templates. In this regard,

	<p>publication of the Interim Report in 2021. This process of review is ongoing and is conducted regularly within Medscheme.</p>	<p>the following improvements are of relevance in the conduct of FWA investigations:</p> <ul style="list-style-type: none"> ▪ The word choices used in the communications were considered carefully to ensure the communications comes across less accusatory and far more engaging with the health care providers e.g., use of the phrase '<u>irregular billing</u>' vs '<u>fraudulent billing</u>' and, '<i>review</i>' vs '<i>audit</i>'. ▪ The overall tone of the communications has been reviewed and significantly amended. ▪ There is greater transparency in the findings and reasons communicated to any FWA implicated health care provider. ▪ There is now a standard invitation in all the communications for the health care provider to engage with Medscheme, making it clear that Medscheme are open for engagement, further explanation, and the settlement of a dispute where possible. <p>These amendments in the FWA processes adopted and utilized by Medscheme has been met with ample positive feedback from various health care providers. Where permissible and in accordance with POPIA, Medscheme is amenable to submit evidence of such feedback to the Panel, as received from various health care providers, particularly during the course of late 2022 and 2023.</p>
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<p>7.</p>	<p>Initially reviewed in 2021 however, the updates in this regard to the SLA's remain ongoing</p>	<p>Medscheme, as an administrator, has ensured that there is greater scheme involvement and increased oversight in respect of FWA investigations. In this regard, most schemes administered by Medscheme updated their service level agreements (i.e., the agreement between the Medscheme Forensics Team and the relevant medical aid scheme). The service level agreements are much stricter, now ensuring certain governance functions Including:</p> <ul style="list-style-type: none"> ▪ Any CMS complaint received is now to be sent to the medical aid scheme in question for their noting. This will also include Medscheme's response to the CMS. ▪ Medical aid schemes are now alerted of payment restrictions (e.g., blocked payments or indirect payment systems). For some medical aid schemes, the case needs to be presented to the scheme fraud forum for review and approval prior to the payment restriction being implemented. Others require only to be informed of the payment restriction with a detailed case history explaining the rationale behind the decision. ▪ There is now a strict turnaround time on Medscheme's response to whistleblower complaints. ▪ There is now strict monitoring that every case is case managed per the processes since implemented, and in line with, <i>inter alia</i>, the FWA Charter and the FWA Code of Good Practice, and there is frequent engagement between Medscheme and the health care
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		<p>provider in question to ensure due process is being upheld and fair outcomes or settlements are reached.</p>
8.	<p>Ongoing on a monthly basis since, having commenced prior to 2021</p>	<p>Monthly fraud / FWA forums are held for some of the medical aid schemes which fall under Medscheme's administration. During these forums, FWA cases are interrogated and further, the statistics in regard thereto are also interrogated. Since 2021 and the release of the Interim Report, Medscheme has concentrated its focus and involvement in these forums.</p>
9.	<p>March 2021</p>	<p>Some of Medscheme's participant medical aid schemes have undertaken independent external audits following the publication of the Interim Report. Auditors appointed by Schemes and report independently directly to the medical aid scheme.</p> <p>By way of example, one specific medical aid scheme paused its forensic services for a period of time following the release of the Interim Report and appointed a task team to audit its, and Medscheme's, processes. The services only resumed following this project and only after they received assurance from the task team in respect of the final findings which concluded, <i>inter alia</i>, that:</p> <p><i>"Based on the work performed by the Task Team as outlined in the scope above, <u>we could not find evidence of unfair racial profiling of Black Healthcare Practitioners based on the cases reviewed which originated through the IFM algorithms process including other sources. We could also not find evidence of the unfair, unreasonable, and unjust processes followed in investigating allegations related to FWA matters. We have, however, agreed to further discuss some process enhancements as stipulated in the table below. We are</u></i></p>

		<p><i>fully aware that the findings of the IP are interim and can change after submissions particularly by Medscheme as they are preparing to do same.”</i></p> <p>Where required and requested by the Panel, Medscheme will seek the permission of the relevant medical aid scheme in order to disclose the confidential report to the Panel for its consideration.</p>
10.	<p>January 2020, January 2021 and remains ongoing to date</p>	<p>Medscheme has, since the release of the interim Report, also increased its resources in the FWA Team.</p> <p>Due to the increased FWA governance as detailed above, stricter service level agreements and improved quality assurance requirements, additional resources had to be appointed to ensure ongoing quality checks. Further, additional capacity has been provided for in respect of training of the Medscheme FWA Team.</p> <p>This update has gone hand in hand with the increased training provided to the FWA team. Within Medscheme, there is an increased focus on even higher level of training and education in the FWA Team which includes ongoing internal training with a dedicated and experienced FWA manager focusing on training of FWA analysts.</p> <p>As at the end of December 2022, Medscheme had increased its total number of qualified certified fraud examiners on the FWA Team from five to twelve. At present, Medscheme spends, on average, >R500 000.00 per annum on furthering the education in the FWA department.</p>

11.	February / March 2021 – to date	<p>Following the publication of the Interim Report, Medscheme has focused on improving the culture within the FWA Team, particularly in respect of those Medscheme individuals who engage directly with health care providers.</p> <p>In this regard, numerous steps were taken to ensure a culture of awareness, empathy, professionalism when dealing with FWA cases. By way of example:</p> <ul style="list-style-type: none"> ▪ Monthly meetings are now held within the Medscheme FWA Team where any concerns identified during the month are shared with the team, and the related policies and rules are highlighted to ensure uniformity and consistency. ▪ Case “<i>brainstorm</i>” sessions are now held where Medscheme FWA team members share different experiences, different views, etc. to ensure that Medscheme is consistent in the way it handle cases and considers various views, thus avoiding a one sided or narrow-minded approach to cases. ▪ Medscheme has implemented a mandatory annual review of all policies and procedures by employees, where Medscheme employees sign electronically as a way to accept that they have read and understood the policies and procedures. ▪ Every member of the Medscheme FWA Team signs the wall of commitment which entails that Medscheme “<i>commits to participate in the journey towards curbing healthcare fraud, waste, abuse and error</i>” and doing so in an ethical, professional way.
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		<ul style="list-style-type: none"> ▪ Sensitivity is often discussed within the FWA Team – It is important to Medscheme that health care providers do not feel targeted / accused in the conduct of the FWA investigation. ▪ As part of Medscheme’s newly revised induction programme for all new employees, the Section 59 process, history and interim findings are explained to the new employees to ensure they have a background of the concerns historically raised and are able to adopt an increased awareness of the issues and sensitivities raised. Even the meaning of ‘bias’, and how Medscheme deals with this, is discussed to ensure the FWA team members understand and appreciate the sensitivity.
12.	<p>Since January 2021 and remains ongoing to date</p>	<p>Medscheme has since adopted an open communication channel and policy with all its representatives. In this regard:</p> <ul style="list-style-type: none"> ▪ Medscheme welcomes any representative assisting healthcare providers to find amicable solutions. Medscheme meet with them for any specific case and ensure we make ourselves available. ▪ An open-door policy is promoted. For example, the Solutionist Thinkers Management Group has the cellphone number of Medscheme’s FWA Team general manager and all other the managers wherein questions and answers are exchanged via WhatsApp or matters are escalated to Medscheme which allows Medscheme to review the matter and get back to them soonest.

		<ul style="list-style-type: none"> It is also important to Medscheme that the representatives also understand the fraud risk management process. In this regard, Medscheme now holds frequent meetings with these representatives to explain our process. Medscheme has also provided templates, FAQ, etc. to ensure that its processes are well understood by all that may become involved with a FWA process.
13.	Since January 2021 and remains ongoing to date	<p>Medscheme has significantly increased focus on FWA awareness since the publication of the Interim Report:</p> <ul style="list-style-type: none"> In respect of external awareness, the Medscheme FWA Team members are involved in numerous forums, including presentations on FWA which are presented at various events. Increased media awareness via radio interviews, articles in magazines etc. has been undertaken by Medscheme.⁴ Medscheme has also undertaken the creation of platforms where healthcare providers can access material – for example, a website platform for GP upskilling where the Medscheme FWA Team is also involved to ensure awareness content loaded for healthcare providers loaded. Another example is the collaboration with the South African Medical Association, whereby articles have been posted in their newsletters to their members, highlighting certain FWA trends that healthcare providers should be acutely aware of.

⁴ See https://mu.linkedin.com/posts/afrocentric-group_fraud-waste-and-abuse-impact-us-all-activity-6998556734847881216-nj3K; <https://www.youtube.com/watch?v=2nM3l64UGZo>; <https://www.afrocentric-online.co.za/reports/afrocentric-ar2020/understanding-our-integrated-model.php>.

14.	2023	<p>Medscheme has 'upgraded' its international benchmarking practices and standards:</p> <ul style="list-style-type: none"> ▪ Ongoing benchmarking to international best practice, working closely with the International Federation of Healthcare Plans and National Healthcare Anti-Fraud Association have been some of the efforts that Medscheme has undertaken since the publication of the Interim Report. ▪ Medscheme Forensics is represented on the South African Healthcare Forum of the Association of Certified Fraud Examiners (ACFE). The Healthcare Fraud Examiner Standards have been finalized, which was developed with the assistance of Medscheme Forensics representatives. Principles of the developed standards are implemented in the Standard Operating Procedures of Medscheme Forensics.
15.	<p>Since January 2021 and remains ongoing to date</p>	<p>Medscheme has adopted and increased focus on society and group engagement, taking into account the real impact of environmental factors in the outcomes of FWA investigations:</p> <ul style="list-style-type: none"> ▪ The Medscheme Forensics Team has access to a number of different societies and groups for clinical consultations, opinions or engagements relating to investigations where health care providers reach out to the Medscheme Forensics Team for advice.

		<ul style="list-style-type: none">▪ Recent interactions in this regard include engagements with the below mentioned societies / groups:<ul style="list-style-type: none">• Independent Practitioner Association (IPA);• Society for Surgeons (Surgicom);• South African Society for Anaesthesiologists (SASA);• Psychiatry Management Group (PsychMG);• South African Audiology Association (SAAA);• Occupational Therapy Association of South Africa (OTASA);• Association of Plastic, Reconstructive and Aesthetic Surgeons of South Africa (APRASSA);• South African Orthopedic Association (SAOA);• Ophthalmology Management Group (OMG);• Cardiothoracic Society of South Africa; and• SA Renal Society (Nephrologists). ▪ Medscheme further considers input from professional societies and the aforementioned groups to ensure best practice, to ensure <i>audi alterem partem</i>, to discuss the latest changes in their specific discipline trends, to ensure clinical merits are not overlooked as well as to ensure that we consider subject matter expert views.
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B. MEDSCHEME'S COMMENTARY ON THE SECTION 59 INVESTIGATION PANEL LEGAL SUBMISSIONS BY VARIOUS PARTICIPANT MEDICAL AID SCHEMES

7. As aforementioned, Medscheme does not intend to burden the Panel with a repetition of submissions or facts, and stands by its own submissions, save to state the following brief comments in respect of the following identified submissions by the various participant medical aid schemes to the Section 59 Investigation process:

8. **BHF Submissions (undated):**

8.1. Medscheme concurs with the submissions advanced by the BHF insofar as the BHF submits that:

8.1.1. the Panel exceeded its powers, insofar as complained of and detailed in Medscheme's Response to the Interim Report dated April 2021;

8.1.2. indirect payment is not prohibited under the MSA, or at all;

8.1.3. the Panel's findings in paragraph 337 of the Interim Report, that the outcome of the FWA investigations conducted by Discovery, GEMS and Medscheme, on the whole have the effect of unfairly discriminating against Black practitioners, is without sufficient basis, particularly taking into account the findings of Dr Zaid Kimmie in his Final Report dated October 2020, which the Panel fails to rely on in the Interim Report;

8.1.4. the discrimination test applied by the Panel to the evidence and as recorded in the Interim Report is flawed, insofar as complained of and detailed in Medscheme's Further Submissions following Legal Argument Hearings dated 7 July 2023; and

8.1.5. a proper consideration and analysis of *all* compounding factors, including those submitted by Medscheme as early as 2020, is critical in order to determine whether or not a finding of race differentiation on outcomes is, in fact, justified in this instance.

9. **Solutionist Thinkers Group Submissions (dated 25 June 2023):**

9.1. Medscheme has considered the submissions made by Solutionist Thinkers Group and takes issues with all the submissions made therein insofar as the submissions, *inter alia*,:

9.1.1. fail to take into account any of the evidence presented at the hearings by the participant medical aid schemes (particularly that of Medscheme) and the findings as recorded in the Interim Report and instead, seek to advance a separate cause which is not supported by any facts, evidence, law or the like. By way of example, the Solutionist Thinkers Group state that it believes that “*there is intentional racial profiling of black healthcare providers by schemes such as Discovery, Medscheme, and GEMS*” and thereafter, continues to assert that the participant medical aid schemes are aware of the demographics of health care providers and use this information to target black health care providers for FWA for financial benefit or gain. However, no basis whatsoever is provided for these inflammatory allegations as against Medscheme, which allegations are wholly denied by Medscheme. Medscheme submits that these submissions, which are, in fact, in direct conflict with Dr Zaid Kimmie’s findings (as well as the findings of the balance of the expert witnesses) insofar as explicit racism, stand to be rejected;

9.1.2. the references made to the report produced by Dr Zaid Kimmie are simply incorrect, alternatively, have not been properly understood and contextualized. Therefore, any submissions made in this regard also stand to be rejected; and

9.1.3. incorrectly reflects the progress and developments made by Medscheme and its FWA Team, since the publication of the Interim Report, as detailed in section A above.⁵ The Solutionist Thinkers Group again, make unsubstantiated and inflammatory allegations which are supported by no factual or legal arguments. These submissions also stand to be rejected.

10. **POLMED Submissions (dated 27 June 2023):**

10.1. Medscheme has considered and noted the submissions made by POLMED, particularly those submissions in respect of the proposed amendments to the Medical Schemes Act 131 of 1998 (“**MSA**”). Medscheme notes as follows:

10.1.1. While Medscheme notes the proposed amendments to the MSA, and in principle, takes no issue with any such amendments deemed practical, reasonable and feasible by the Panel for both health care providers and medical aid schemes, Medscheme highlights that the risk/s described by POLMED in its submissions, particularly at paragraph 13 thereof – relating to the process in which health care practitioners (or service providers) are placed on indirect payment where flagged for FWA – is significantly ameliorated (if not completely

⁵ The Solutionist Thinkers Group record, without justification or evidence, that “*Medscheme have moved from better to worse in the past two years with auditors that are brutal and ruthless towards our members leaving no room for negotiation or engagement.*” This is simply false and is in direct contradiction to the ample efforts which Medscheme have made to date in respect of its FWA systems, and which are recorded herein. Accordingly, Medscheme wholly denies any such allegations.

so) by way of Medscheme's new FWA processes as described in section A above. The new case management system implemented by Medscheme, as at 1 April 2022, assists in ensuring due process in that a fair and regulated process is undertaken in respect of the carrying out of FWA investigations. The assistance of specified audit phases, audit trails, merit approval of FWA investigations by senior managers and pre-communication approval by way of the new case management system now ensures that a health care practitioner's right to be heard is prioritized and upheld. Furthermore, Medscheme's updated mandate to prioritize engagement with a health care practitioner flagged for FWA has since lead to the amicable resolution of many FWA disputes. This has been evident by way of the positive reviews since provided from varying health care practitioners, which reviews Medscheme is amenable to providing to the Panel in line with POPIA considerations.

- 10.1.2. In respect of the balance of the submissions advanced by POLMED, Medscheme has addressed the issues related to methodology in calculating amounts to be recovered in terms of FWA processes, the impact that being placed on indirect payment has on the flow of money and the handing over of patient files containing confidential information for the purpose of FWA investigations in its Response to the Interim Report dated April 2021, which submissions Medscheme stands by.⁶

Submitted By:

Medscheme Holdings (Pty) Limited

21 July 2023

⁶ See Medscheme Response to the Interim Report dated April 2021, pages 85 – 91.