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HFA condemns misrepresentation of findings of the Section 59 Investigation Report: Medical schemes have NOT been found guilty of unfair discrimination or racial profiling

The recently released report of the Section 59 Investigation into allegations of unfair racial discrimination and procedural unfairness by medical schemes made **no legal finding that medical schemes or their administrators unfairly discriminated based on race**. Yet, various prominent commentators have publicly distorted the findings to imply the opposite.

This inaccurate narrative undermines the integrity of medical schemes and their duty to protect members' funds from being paid out inappropriately. It is highly damaging to the reputations of these good corporate citizens who contribute positively to the workings and sustainability of the healthcare industry. Moreover, it erodes trust in the professionalism of healthcare providers who choose to act ethically.

This misrepresentation requires urgent correction. The Health Funders Association (HFA) calls on all commentators to ensure that public statements are grounded in an accurate reading of the final report¹. Whether deliberate or not, misinformation hampers the vital work of detecting and preventing fraud, waste, and abuse (FWA) in the healthcare system.

The facts:

No legal finding of unfair discrimination

The Panel's core mandate was to assess whether the fraud detection systems used by medical schemes and administrators resulted in unfair racial discrimination, as defined in the Constitution and the Equality Act.

¹ <https://www.medicalschemes.co.za/section-59-investigation-final-report/>

Following five years of investigation, which included extensive data analysis, oral and written evidence, and input from legal counsel (and during which time GEMS, Discovery Health, and Medscheme voluntarily submitted detailed data to assist the Panel, demonstrating their confidence that their processes are fair and free of bias), the Panel stated clearly in paragraph 313 of the final report: "*We decided **not to make legal findings about unfair discrimination** in terms of section 9 of the Constitution or the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 for the historic period.*"

This means the Panel **made no legal finding that medical schemes or their administrators unfairly discriminated based on race**. Any claim to the contrary is simply false.

The complainants

The interim report published in 2021 stated there was **no evidence of explicit racial bias** in the systems used to identify fraud. It stated: "*We **do not find evidence of explicit racial bias in the algorithms** (to the extent that the workings of the algorithms were disclosed) and methods that the administrators and schemes use to identify FWA. (Para 708)*"

Furthermore, the evidence presented by medical schemes, and noted in the final report, included that many, if not all, of the healthcare practitioners that submitted complaints about racial bias to the Panel were actually guilty of fraudulent activity against medical schemes. These included:

- An optometrist who **submitted false claims** of more than **R1m** and **paid cash and provided sunglasses** to members.
- A social worker who was found in multiple instances to have **submitted false and inflated claims** for **financial gain**.
- An orthopaedic surgeon who repeatedly submitted claims for **services not rendered** amounting to **millions of rands**.
- A general practitioner who billed for **more expensive medicines** than were **actually dispensed**.
- Psychologists who **repeatedly submitted claims** with **longer sessions** than were provided in order to **inflate their earnings**.

The Panel **made no finding** that these individuals should not have been investigated. Nor did it find that medical schemes acted improperly by recovering funds.

Medical schemes are legally and ethically bound to protect their members and their members' funds against fraud, waste and abuse in healthcare, and it is vital that they have the adequate, fair and transparent mechanisms to investigate and **recover misused funds** belonging to their members.

Although only a small percentage of healthcare providers are flagged for FWA, their behaviour has a disproportionate impact on the overall cost of healthcare for 9 million medical scheme members. In fact, based on the quantified annual losses due to FWA which is estimated to be up to 15% ²of total healthcare claims paid for by schemes, contribution increases could in turn be 15% lower if FWA were eliminated. Sadly, the misrepresentation of the Panel's findings emboldens and enables these forms of abuse, which should be unequivocally condemned.

While the vast majority of healthcare providers act ethically, responsibly and hold positions of trust and respect in society, the small minority who engage in unscrupulous practices threaten the integrity of the entire system.

² <https://www.medicalbrief.co.za/fraud-and-abuse-cost-medical-schemes-r28bn-a-year/>

What do the risk ratios show?

The Section 59 Investigation Panel was clear that medical schemes are **required to have processes in place to protect member funds** from abuse. It found no evidence of explicit racial bias in these processes.

In fact, the statistical findings in the final report were derived from analyses conducted by a single expert, Dr Kimmie, who classified health providers by race, using their surnames. **This methodology has been widely criticised as unreliable and flawed** by multiple eminent statistical. However, the key point (as stated by the Panel) is that the risk ratios **did not** provide the conclusive evidence of unfair discrimination that the Panel was mandated to find. In particular, the final report states: *“While the risk ratios produced by Dr Kimmie’s methodology have faced some criticism, the findings confirm that the tool is robust, even though **no conclusion has been reached that these ratios amount to unfair discrimination under the Constitution**” (Para 314.2)*

It further acknowledged that: *Dr Kimmie accordingly accepted that the results demonstrated a correlation between race and FWA status [investigation outcomes], and such correlation **could be explained** by the race of the provider **or by some other confounding factor**. The Interim Report noted and accepted this qualification. (para 85).*

The Panel also noted that: *The expert evidence presented by the Schemes and Administrators has demonstrated that there may still be **scope to improve Dr Kimmie’s methodology***. (para 312)

Furthermore, the annexures in the report include results from **only 26 of the 90 medical disciplines**. In many of these, the confidence intervals are so broad (from zero to infinity) that they render the findings statistically inconclusive. Quoting these selectively, and without proper context, is misleading and unfairly impugns medical schemes without acknowledging that this evidence (as the Panel has stated) **does not actually support a legal finding of unfair discrimination**.

Medical schemes are essentially trust funds which rely on member contributions to pay for legitimate healthcare services that those members require. Misuse of these funds, estimated to be up to R28 billion per year³, directly increases the cost of cover (monthly contributions) and decreases access to healthcare. In other words, the actions of a few healthcare providers acting unethically, adversely affect the affordability of critical health cover for 9 million medical scheme members.

HFA fully supports the principle that forensic processes must be fair, transparent, respectful and non-discriminatory. All parties must be afforded the opportunity to engage meaningfully and to have their views properly taken into account in any determination.

HFA also recognises that many recoveries are due to inadvertent errors rather than deliberate misconduct. However, even in these cases, funds that were incorrectly claimed must be repaid to the scheme in order to preserve the collective pool and ensure its sustainability. In a medical scheme, the failure to recover funds paid out for a service not rendered increases contributions for everyone.

A commitment to equity and integrity

³ <https://www.medicalbrief.co.za/fraud-and-abuse-cost-medical-schemes-r28bn-a-year/>

HFA unequivocally condemns racism in any form and is actively participating in the advisory process initiated by the Council for Medical Schemes to develop a Code of Conduct for FWA investigations. This will ensure that the rights and responsibilities of all parties are clearly defined and upheld.

However, it is important to note that the evidence presented to the Panel did not support any finding that current processes are biased or systematically unfair.

At the same time, we strongly oppose the misrepresentation of the Section 59 findings. The facts are that there were no legal findings of unfair discrimination or racial profiling, and suggesting otherwise inflates tensions, undermines trust and empowers the minority of healthcare providers who misuse public sympathy to conceal wrongdoing.

We call on all commentators to read the final report which does not support blanket conclusions of racial profiling. Instead, it highlights the importance of improving fairness, accuracy and transparency in how forensic systems are administered, which HFA and its members are committed to.

The protecting of funds entrusted to medical schemes by their members and upholding the reputation of ethical healthcare providers both depend on a shared commitment to responsible oversight, evidence-based engagement and professional integrity.

ENDS