

**CLOSING REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)
(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA 1996 AND
SECTION 8(1) OF THE PUBLIC PROTECTOR ACT 1994**



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**CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF
MALADMINISTRATION BY THE COUNCIL FOR MEDICAL SCHEMES**

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1. INTRODUCTION

- 1.1. This is my closing report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).
- 1.2. I received a complaint from Dr W G James (the Complainant) on 2 December 2015 in which complaint he alleged that the Council for Medical Schemes (CMS) failed to regulate and oversee the merger between Medcover and Liberty Health Medical Scheme (Liberty).
- 1.3. The essence of the complaint was as follows:
 - 1.3.1 The complaint was based on on an affidavit that was filed with Crystal Park Police Station on 15 October 2015. It was alleged that a former trustee of Liberty Health Medical Scheme lodged a criminal complaint at the Crystal Park Police Station (Case no. 84/10/2015) which was subsequently referred to Hillbrow Police Station, alleging that a payment of either R62 million or R65 million was made by Liberty to Medcover Medical Scheme (Medcover) ostensibly for a “Medical Software Operating system”;
 - 1.3.2 It is suspected that the payment was made to Medcover in order to “facilitate” the merger between Liberty and Medcover. It was stated further that the beneficiaries of the largesse at Medcover have not been established and that this was an *ad hoc* “out of the ordinary” payment;
 - 1.3.3 According to the Complainant, the Medical Schemes Act makes no provision for the Regulator to apply *ad hoc* solutions to circumstances where a Medical Scheme Administrator is indebted to a scheme nor does the Act makes

provision for the Regulator to insist on payments from a Medical Scheme Administrator to a scheme before an amalgamation may be approved. In his view, such an act would be defined as a corrupt practice in terms of the Prevention and Combating of Corrupt Activities Act;

- 1.3.4 The Complainant indicated that Dr Saths Cooper (Dr Cooper) was the trustee and also the Chairperson of the Board of Trustees of Medcover at the time and was paid an amount of R1m 'redundancy package' by or via V-Med, the Administrator of Liberty;
- 1.3.5 Further, the payroll department of Liberty was aware that Dr Cooper was not an employee of Medcover however, despite this knowledge, they enquired whether Dr Cooper had applied for a tax directive in respect of the R30, 000.00 exemption granted by SARS in the event of a redundancy payment;
- 1.3.6 It was suspected that the payment was an inducement for Dr Cooper to resign as a trustee of Medcover on 31 December 2009 in order to ensure that he did not become a trustee of the amalgamated scheme;
- 1.3.7 Further, the Complainant alleged that the Chief Financial Officer (CFO) of V-Med, Mr Morgan Ramsamy (Mr Ramsamy) received an email from the Chief Executive Officer (CEO), Mr Peter Botha (Mr Botha), wherein Mr Ramsamy was made aware of the agreement to pay Dr Cooper, therefore both the CEO and CFO were contravening the Medical Schemes Act;
- 1.3.8 It was explained that trustees are not employees and cannot be made redundant, therefore the payment of R1m to Dr Cooper as a "redundancy package" was irregular; and
- 1.3.9 Therefore if payment was made to Dr Cooper by V-Med it would mean that Dr Cooper was in the employ of V-Med in some capacity, which he had been in their employ for some time that V-Med and Dr Cooper were in contravention of the Medical Schemes Act.

1.4 The investigation was conducted in terms of section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution), which confers upon the Public Protector, the power to investigate any alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action.

2. Based on the analysis of the complaint and allegations the following issue was identified to inform and focus the investigation

2.1 Whether the Council for Medical Schemes failed to investigate allegations of impropriety and irregularities that occurred during the merger between Liberty and Medcover Medical Scheme.

3. THE INVESTIGATION PROCESS

3.1 The approach to the investigation included an exchange of documentation between the Public Protector and the CMS. All relevant documents and correspondence were obtained and analysed. Relevant laws, policies and related prescripts were considered and applied throughout the investigation.

4. The Key sources of information

4.1 Documents and information received

4.1.1 Proposed sale of the administration business of Medcover Medical Scheme to VMED Administrators (Pty) Ltd dated September 2008;

4.1.2 Feasibility of an Amalgamation of Liberty Health Medical Scheme and Medcover Medical Scheme, July, 2009;

4.1.3 Exposition of transaction involving the amalgamation of LIBERTY HEALTH MEDICAL SCHEME and MEDICOVER MEDICAL SCHEME in terms of section 63 of the Medical Schemes Act, 131 of 1998 dated 28 August 2009; and

Issue in dispute

- 5.1.2 The issue for my determination was whether CMS failed to investigate allegations of impropriety and irregularities that allegedly occurred during the merger between Liberty Health and Medcover Medical Schemes.
- 5.1.3 Amalgamations and transfers are regulated in terms of the provisions of section 63(1) to section 63 (17) of the Medical Schemes Act, 1998. The Act states that no transaction involving amalgamation of the business of a medical scheme with any other medical scheme, shall be of any force unless such amalgamation is carried out in accordance with the provisions of this section. The relevant requirements that must be met for a successful amalgamation are stated in the Act as follows:
- 5.1.3.1 The Medical scheme shall deposit with the Registrar a copy of the exposition of the proposed transaction including a copy of every actuarial statement and shall furnish particulars of the voting at any meeting of its members at which the proposed transaction was considered;
- 5.1.3.2 Copies of the exposition of the proposed transaction and of the report shall for a period not less than twenty one (21) days be made available for inspection by any member, creditor or by any other person or body having an interest therein;
- 5.1.3.3 A person who has an interest in the proposed transaction may in writing submit to the Registrar within twenty one (21) days, representations concerning the transaction as are relevant to his, hers or its interests;
- 5.1.3.4 The Registrar shall, if satisfied that all requirements have been met, consider the exposition and thereafter confirm, or suggest modifications in certain respects or decline the exposition. The Registrar may not confirm an exposition unless he is satisfied that the transaction will not be detrimental to the interests of the majority of members of the scheme and will not render

4.1.4 Decision of the Appeal Board of the Medical Schemes in the matter between the Principal Officer of Medcover and Registrar of Medical Schemes, Medcover Medical Scheme and Liberty Health Medical Scheme, dated 13 September 2010.

Copies of the following letters were also furnished:

4.1.5 Letter to the Acting Registrar from the Principal Officer and Chairperson of Medcover dated 24 November 2008;

4.1.6 Letter from the CMS to the Principal Officer of Medcover dated 9 December 2008;

4.1.7 Letter to the Registrar of the CMS from Chief Executive of Liberty Health, dated 5 November 2009; and

4.1.8 Letter from the CMS to the Principal Officer of Liberty Health Medical Scheme, dated 10 November 2009.

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED DURING THE INVESTIGATION AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS

5.1 Regarding whether the Council for Medical Schemes failed to investigate allegations of impropriety and irregularities during the merger between Liberty and Medcover Medical Scheme:

Common cause facts

5.1.1 There was a merger between Liberty Health and Medcover Medical Schemes in 2009 which was overseen by the CMS in terms of the Medical Schemes Act.

any of the medical schemes which will continue to exist unable to meet the requirements of this Act or to remain in sound financial condition; and

- 5.1.3.5 Any person who is aggrieved by a decision of the Registrar may within thirty (30) days after the date on which the decision was made, appeal against such decision to the Appeal Board or the High Court as the case may be.
- 5.1.4 According to the evidence obtained by the investigation team, the CMS did oversee the process of amalgamation between Medcover and Liberty as mandated by the Medical Schemes Act.
- 5.1.5 The CMS furnished my investigation team with copies of documents and correspondence demonstrating the process that was undertaken. There is no evidence that the matter raised by the Complainant or any suspicion of wrongdoing was ever brought to the attention of the Registrar of CMS during or after the amalgamation.
- 5.1.6 The CMS submitted that the amalgamation process was undertaken in compliance with the law and had there been suspicion of wrong doing or criminal activity, it should have been alerted as the first port of call because interests of members of medical schemes lie at the heart of its statutory mandate. It further stated that had the issues of corruption been brought to its attention at any stage, it would have been able to take appropriate steps to ensure recovery of any money paid irregularly or unlawfully to any person(s).
- 5.1.7 Regarding the allegation made against Dr Cooper, the CMS stated that it was aware that he was not going to be the Chairman or trustee of the new entity that was going to be formed and it had no knowledge of any negotiation of money being paid to him. According to CMS, had it become aware or had it suspected the existence of such an unlawful transaction, it had a statutory mandate to act and would have approached the implicated parties but no such allegations were brought to its attention.

5.1.8 Further, CMS advised that medical schemes are required to reflect Trustee payments in their audited financial statements so any abnormal transaction would have been picked up by the Financial Supervision Unit. It further stated that at this stage, even if the allegation had merit, it might be too late to pursue the matter especially that Liberty Health was no longer in existence because it has since been merged with Bonitas.

6. **COMPLAINANT'S RESPONSE TO THE NOTICE OF INTENTION TO CLOSE**

6.1 Having considered the evidence gathered in this matter, a Notice in terms of Rule 42(1) of the ***Public Protector Rules relating to Investigations by the Public Protector and Matters Incidental Thereto***, 2018, was served on the Complainant. The rule states that *"when the Public Protector intends concluding a complaint by means of a closing report provided for in rule 41(b), the complainant shall be informed in writing accordingly and be given an opportunity to make representations in connection with the intended closure of the complaint within 14 days of delivery of the notification"*

6.2 A notice of intention to close was served on the Complainant to grant him an opportunity to substantiate his complaint with evidence before the investigation is concluded however he did not make any further submissions.

7. **REASON FOR CLOSURE**

7.1 According to the evidence obtained in this matter, the process of amalgamation between Liberty Health and Medicover Health Scheme was undertaken in compliance with the provisions of section 63(1) to section 63(17) of the Medical Schemes Act, 1998.

7.2 There was no evidence that the Registrar was alerted to any wrongdoing or to any suspicion of wrongdoing on the part of any person during or after the amalgamation.

7.3 Without any evidence to support the allegation that the CMS failed in its statutory obligation to oversee the merger between Liberty Health and Medicover as required by law, this assertion cannot be upheld.

7.4 This investigation is therefore closed.



ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 21/10/2019