

Genesis Medical Scheme vs TimesLive

August 27 2021

Finding: Complaint 8885

Date of publication: February 17 2021

Headline: *It's your baby now: no one is on the watch while medaids clobber members*

Author: Wendy Knowler

Particulars

This finding is based on a written complaint by Mr NCJ Veldman of Clyde & Co on behalf of Genesis Medical Scheme; a written reply by Ms Susan Smuts on behalf of TimesLive; and a written response to TimesLive's reply by Mr Veldman on behalf of Genesis Medical Scheme.

Complaint

Genesis Medical Scheme submits that the **article** transgresses the following clauses in the Press Code:

"1. Gathering and report of news

The media shall:

1.1 take care to report news truthfully, accurately and fairly;

1.2 present news in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarization;

1.3 present only what may reasonably be true as fact; opinions, allegations, rumours or suppositions shall be presented clearly as such;

1.7 verify the accuracy of doubtful information, if practicable; if not, this shall be stated;

1.8 seek, if practicable, the views of the subject of critical reportage in advance of publication, except when they might be prevented from reporting, or evidence destroyed, or sources intimidated. Such a subject should be afforded reasonable time to respond; if unable to obtain comment, this shall be stated;

1.9 state where a report is based on limited information, and supplement it once new information becomes available;"

"Privacy, Dignity and Reputation

The Media shall:

3.3 exercise care and consideration in matters involving dignity and reputation, which may be overridden only if it is in the public interest and if:

3.3.1 the facts reported are true or substantially true; or

3.3.2 the reportage amounts to protected comment based on facts that are adequately referred to and that are either true or reasonably true; or

3.3.3 the reportage amounts to a fair and accurate report of court proceedings, Parliamentary proceedings or the proceedings of any quasi-judicial tribunal or forum; ...”

“6. Advocacy

The media may strongly advocate their own views on controversial topics, provided that they clearly distinguish between fact and opinion, and not misrepresent or suppress or distort relevant facts.”

“7. Protected Comment

7.1 The media shall be entitled to comment upon or criticise any actions or events of public interest; and

7.2 Comment or criticism is protected even if it is extreme, unjust, unbalanced, exaggerated and prejudiced, as long as it is without malice, is on a matter of public interest, has taken fair account of all material facts that are either true or reasonably true, and is presented in a manner that it appears clearly to be comment.”

1. Summary of text

1.1. The article initially provides a brief overview of the work of the Council for Medical Schemes (CMS) and some of the difficulties it encountered during the previous year, including the deaths of two CEOs and the suspension of seven executives and managers while being investigated for “improper and corrupt” conduct.

1.2. It then goes on to discuss, in particular, the experience of Jens Herf with Genesis Medical Scheme.

1.3. According to the article, the Medical Schemes Act states that no medical scheme may apply exclusions and waiting periods on the cover of a baby born to a parent who is already a member of the scheme.

1.4. However, Genesis “sought to do just that” when a baby was born prematurely to Herf and his partner in March 2020.

1.5. Herf lodged a complaint with the CMS, whose Registrar ruled in his favour and directed Genesis to admit the child and to cover her medical bills.

1.6. However, according to the article, the baby still cannot be registered with Genesis because the scheme appealed against the CMS’s finding.

1.7. The CMS reportedly assured Herf that the appeal hearing would be held in August 2020, but the case was not among those heard that month.

1.8. When TimesLive contacted the CMS, it did not explain why the matter was not heard in August 2020, and stated that pending appeal hearings would be held again from April 2021.

1.9. Genesis declined to comment when TimesLive approached it on the grounds that the matter was still subject to an appeal and was therefore sub judice.

1.10. Partly in response to the delay in hearing Genesis' appeal, Herf expressed the view that medical schemes take advantage of "the CMS process".

2. Arguments

Genesis Medical Scheme

2.1. Genesis complains that the article was inaccurate in several respects.

2.1.1. Firstly, it argues that the article's interpretation of the Medical Schemes Act regarding the imposition of a waiting period is incorrect, and presumes that it relies on Section 29A (5) of the Act.

2.1.2. It contends that, in terms of Section 29A (1) of the Act, a waiting period can be imposed when a dependant was previously not a beneficiary of a medical scheme.

2.1.3. Genesis further points out that Herf never applied for his partner to join his medical scheme, nor did she do so of her own accord.

2.1.4. It adds that when Herf requested Genesis to provide cover for the birth of the child, as well as for post-natal complications, he was informed that he was entitled to register the child as a dependant member but that the confinement would not be covered by it.

2.1.5. Herf subsequently applied to add the child as a dependant from the date of her birth.

2.1.6. Genesis agreed to add the child as a dependant, but subject to a three-month waiting period (during which no benefits would be paid) and a 12-month waiting period (during which benefits for certain conditions would be excluded).

2.1.7. Genesis argues that, in view of the fact that Herf's partner was not a member of the scheme, and in view of the fact that she was not married to Herf, the scheme was entitled to impose these waiting periods in terms of the Medical Schemes Act.

2.2. Secondly, Genesis submits that the article incorrectly states that the child could not be registered with the scheme because of its appeal against the ruling of the CMS Registrar.

2.2.1. Genesis says it agreed to admit the child, subject to certain conditions provided for under Section 29A (1) of the Medical Schemes Act, but that Herf had refused to accept these waiting periods.

2.3. Thirdly, Genesis rejects as misleading Herf's comment that medical schemes always take advantage of the CMS appeal process, and submits that this process is in the interests of both the medical scheme member and the medical scheme.

2.3.1. It further submits that the inclusion of Herf's comment creates the false impression that the CMS appeal process is always exploited by medical schemes and that they use it as a way to avoid paying claims.

2.4. Lastly, Genesis complains that, while it was contacted for comment "on the matter", it was not specifically asked for comment on the article, nor was it given the opportunity to see the article before publication, thus denying it the opportunity to correct factual inaccuracies.

2.5. It therefore demands the retraction of the article and an apology.

TimesLive

2.6. TimesLive contends that the report was fair and accurate, and argues that it falls "within the bounds of the Press Code".

2.7. It further submits that the section of the article which deals with the Herf matter is based on a CMS ruling, and attached a copy of this ruling.

2.7.1. It stands by the statement in the article that the Medical Schemes Act precludes medical schemes from "applying exclusions and waiting periods on the cover of a baby born to a parent who is already a member", and maintains that this was an accurate interpretation of the law as explained in the CMS ruling.

2.7.2. It also contends that the CMS ruling specifically states that the imposition of a waiting period does not apply to a baby whose parent is a member of a medical scheme, contrary to the assertion by Genesis that the Act authorises the imposition of a waiting period for membership as a dependant.

2.7.3. TimesLive further submits that, while Genesis is entitled to challenge the CMS ruling on appeal, it is not entitled to insist that the publication accept its stance "in the face of a contrary interpretation by a body that is competent to rule on the matter".

2.7.4. It also contends that Genesis appears to be seeking a ruling from the Press Ombud that contradicts the interpretation of the Act by the CMS, and submits that this is inappropriate in view of the fact that the Press Ombud does not adjudicate complaints on medical schemes.

2.8. TimesLives regards the references by Genesis to the status of the child's mother as a non-member of the scheme as irrelevant. It states that its article deals with the efforts of the father, who is a member of the scheme, to register his daughter as his dependant.

2.9. With regard to its statement that the baby still cannot be registered with the scheme in view of the fact that Genesis has lodged an appeal against the CMS ruling, TimesLive submits that this should be read in the context of the story.

2.9.1. It accepts that the baby can be registered with the scheme, but notes that this was on condition Herf accepts the exclusions of a general waiting period of three months and a 12-month condition-specific waiting period.

2.9.2. However, it adds, the point of the CMS ruling was that the child should be registered with the scheme without these waiting periods.

2.9.3. It therefore submits that it was accurate to state that the child could not be registered with Genesis because she could not be registered in line with the CMS ruling and because the appeal by Genesis was delaying the implementation of the ruling.

2.9.4. Accordingly, the publication dismisses this complaint by Genesis as petty and misleading, and insists that the statement “was not inaccurate in any material way”.

2.10. TimesLive also regards the complaint about Herf's comment that medical aid schemes are able to exploit the CMS process as frivolous.

2.10.1. It submits that the publication of the comment is justified on the following grounds: it was properly attributed to Herf and reported as his comment; readers would understand that he was expressing his frustration at the way his case has been dealt with; and it is obvious from the story that the matter was adjudicated and that members of medical schemes have the opportunity to lodge complaints.

2.11. With regard to Genesis' right to comment, TimesLive submits that the medical scheme was indeed offered an opportunity to do so, but chose not to comment on the grounds that the matter was on appeal and therefore sub judice (this was reflected in the story).

2.11.1. It further submits that the report included a previous comment that the matter was on appeal and that the CMS Registrar's ruling was therefore suspended, “and of no force or effect”.

2.11.2. In addition, TimesLive argues that even though it tried to obtain comment from Genesis before publication, it was not obliged to do so as it was reporting on a ruling by a statutory body which adjudicates complaints regarding medical schemes.

2.11.3. In support of this contention, it cites a recent finding by Deputy Press Ombud Herman Scholtz (Mr Siyabonga Gama vs Sunday Times) that the media is not obliged to seek comment when reporting on the proceedings of the Zondo Commission of Inquiry, and submits that the same principle applies in this matter.

2.11.4. It also refers to a Constitutional Court judgment in *S v Mamabolo*, and quotes the following remark: “(T)he constitutional ‘default position’ regarding the dispensing of justice is that it must be done in public rather than behind closed doors. It is also clear that this principle applies not only to court proceedings per se, but also, where appropriate, to other fora where justice is dispensed.”

2.11.5. In addition, TimesLives submits that there is no requirement in the Press Code that requires it to show Genesis a copy of its story ahead of publication or to elicit comment on the article.

2.12. In conclusion, TimesLive asks for Genesis’ complaint to be rejected.

Further arguments

2.13. Genesis repeats its contention that the article violates clause 1.1 of the Press Code, and once again submits that the three statements it identified in its complaint are inaccurate.

2.13.1. It contends that the Medical Schemes Act does not state that “no medical aid scheme may apply exclusions and waiting periods on the cover of a baby born to a parent who is already a member”.

2.13.2 It states that Section 29A (5) of the MSA provides that “a medical scheme may not impose a general or a condition-specific waiting period on a child-dependant born during the period of membership”, and submits that the dispute between Genesis and Herf concerns, among other things, the interpretation of this provision.

2.13.3. It further maintains that, if TimesLive understood the published quotation as the CMS’s interpretation of the relevant statutory provision, then the article should have made this clear. However, it contends, the article simply made a “broad interpretative statement” without referring to the relevant parts of the CMS ruling or the relevant statutory provision.

2.13.4. It also states that Genesis does not insist that its interpretation must be accepted as being correct, but submits that the relevant piece of legislation is not quoted accurately in the article, and wants “the correct factual position” to be reported.

2.14. Genesis also takes issue with the statement in the article that the baby still cannot be registered with the scheme in view of its appeal against the CMS ruling.

2.14.1 In response to TimesLive’s reply, Genesis submits that if the article indeed meant that the baby can be registered with the scheme, but not without a general waiting period of three months and a 12-month condition-specific waiting period because the scheme appealed against the decision, then this should have made clear in the article.

2.14.2. Instead, says Genesis, the article creates the impression that the child cannot currently be registered with the scheme at all, “which is simply not true”.

2.15. Genesis again objects to the statement in the article that “medical schemes are able to completely exploit the CMS process, as they know full well they will get away with it”.

2.15.1 The medical scheme contends that, contrary to TimesLive’s submission, it is unclear in the article whether this comment is the view of the writer or whether it is Herf’s opinion.

2.16. The medical scheme further asserts that TimesLive “had every opportunity” to obtain the correct factual information from Genesis, the CMS Registrar or Herf, but failed to do so.

2.17. In conclusion, Genesis repeats its request that the article be retracted and that TimesLive apologise for the inaccuracies in the article.

3. Analysis

3.1. Genesis’ complaint makes a general reference to breaches of clauses 1.1, 1.2, 1.3, 1.7, 1.8, 1.9, 3.3, 3.3.1, 3.3.2, 3.3.3 and Sections 6 and 7 of the Press Code. However, it only provides specific complaints relating to clauses 1.1, 1.2, 1.3 and 1.8. Accordingly, my Analysis and Finding will be confined to these four clauses.

3.2. Genesis argues that the article’s interpretation of the Medical Schemes Act on the imposition of a waiting period is incorrect and argues that, in terms of Section 29A (1) of the Act, such a waiting period can be imposed when a dependant was previously not a beneficiary of a medical scheme.

3.2.1. It goes on to quote Section 29A (5) of the Act, which states that “(a) medical scheme may not impose a general or a condition-specific waiting period on a child-dependant born during the period of membership”.

3.2.2. It acknowledges that the dispute between Genesis and Herf concerns, among other things, the interpretation of this provision of the Act.

3.2.3. However, the office of the Press Ombud is not the appropriate forum to make a finding on the interpretation of the provisions of the Medical Schemes Act. Such a determination falls within the domain of the CMS, a statutory body set up to adjudicate complaints relating to medical schemes.

3.2.4. In response to TimesLive’s reply to the complaint, Genesis also objects to the wording of the statement that “no medical aid scheme may apply exclusions and waiting periods on the cover of a baby born to a parent who is already a member”.

3.2.5. However, this statement – which paraphrases Section 29A (5) of the Medical Schemes Act – can be regarded as a reasonable summation of this particular section of the Act, in line with clause 1.1 of the Press Code. In fact, Genesis recognises in its complaint that “(t)he relevant provision being relied upon is presumably Section 29A (5) of the MSA”.

3.3. There is some merit in Genesis' objection to the statement in the article that Herf's child cannot be admitted to the scheme because of its appeal against the CMS ruling.

3.3.1. The article does not contextualise this statement by explaining that, even though Genesis has lodged an appeal, the baby can nevertheless still be admitted to the scheme – but subject to certain waiting periods.

3.3.2. The child has still not been registered because Herf declines to accept these conditions. It is therefore misleading to give the impression that the reason the child cannot be admitted is due to Genesis' appeal against the CMS ruling.

3.3.3. TimesLive's failure to make this clear can be regarded as a breach of clause 1.2 of the Press Code, which requires news to be presented "in context..., without any... departure from the facts whether by ... misrepresentation, material omissions, or summarization".

3.4. Genesis objects to the comment in the article that medical schemes always take advantage of "the CMS process", and says that this creates the impression they do so in order to avoid paying claims.

3.4.1. However, the article does not make any such inferences about the CMS's processes. In fact, the article is largely based on a complaint that Herf lodged with the CMS, which was duly adjudicated and which ruled in his favour.

3.4.2. In response to TimesLive's reply, Genesis further argues that it is unclear whether the comment in question is the writer's view or Herf's opinion.

3.4.3. There can be no doubt whatsoever about the source of the comment: it is placed in quotation marks, which clearly signal that a speaker is being quoted. And, as this quote follows immediately after the sentence which refers to Herf, it is obvious that he is being quoted.

3.4.4. While Herf's comment is indeed a general statement, it will be regarded by a reasonable reader as an expression of his exasperation about the delays caused by the CMS's processes.

3.4.5. The inclusion of Herf's comment complies with clause 1.3 of the Press Code, which states that "opinions shall be presented clearly as such".

3.5. There is no merit in Genesis' complaint that it was not specifically asked for comment on the article nor that it was not given an opportunity to have sight of the article before publication.

3.5.1. The Press Code does not make any provision for comment on an article or for an opportunity to see an article before publication. Clause 1.8 merely obliges the media to “seek, if practicable, the views of the subject of critical reportage in advance of publication”.

3.5.2. TimesLive complied with this requirement, but Genesis chose not to provide any comment on the grounds that it believes the matter was sub judice, which was duly reflected in the article.

3.5.3. Furthermore, the article included a previous comment from Genesis that the matter was on appeal.

4. Finding

Genesis’ complaint that the article is in breach of **clause 1.1** is **dismissed** for the reason identified in point 3.2.5 of my Analysis.

The complaint that the article is in breach of **clause 1.3** is **dismissed** for the reason identified in point 3.4.5 of my Analysis.

The complaint that the article is in breach of **clause 1.8** is **dismissed** for the reasons identified in points 3.5.1 to 3.5.3 of my Analysis.

The complaint that the article is in breach of **clause 1.2** is **upheld** in relation to the following statement in the article: “But the baby still can’t be registered with the scheme because it has appealed the decision.”

This gave the misleading impression that the child cannot be admitted as a dependant by Genesis in view of the medical scheme’s appeal against the CMS ruling (see points 3.3.1 to 3.3.3 in my Analysis).

This breach of the Press Code is a **Tier 2** offence, and TimesLive is required to publish a correction which clarifies and provides an appropriate context for the statement in question. The text should:

- be published at the earliest opportunity after the time for an application for leave to appeal has lapsed or, in the event of such an application, after that ruling;
- refer to the complaint that was lodged with this office;
- end with the sentence, “Visit www.presscouncil.org.za for the full finding”;
- be published with the logo of the Press Council ; and
- be approved by the Deputy Press Ombudsman.

5. Appeal

The Complaints Procedures lay down that, within seven working days of receipt of this decision, either party may apply for leave to appeal to the Chairperson of the SA Press Appeals Panel, Judge Bernard Ngoepe, fully setting out the grounds of appeal. He can be contacted at Khanyim@ombudsman.org.za

Tyrone August
Deputy Press Ombudsman
August 27 2021