

9 March 2022

To : Acting Chief Justice – Honourable Judge R Zondo
To : Honourable Judge Presidents - All Divisions of the High Court of South Africa
To : Minister of Transport – Honourable F Mbalula
To : The Director General - National Treasury
To : The Executive Officer – Legal Practice Council
To : All Media

Dear Sir/ Madam

RE: VARIOUS LETTERS FROM MEDICAL EXPERTS COMPLAINING ABOUT UNPAID INVOICES AND CALLING FOR A PROHIBITION IN THE USE OF THEIR REPORTS BY THE RAF

- 1 The above matter refers.
- 2 The RAF have noted with serious concern various letters which have recently been sent by medical experts to members of the Judiciary, National Treasury, The Presidential Hotline and also circulating in social media, in the main complaining about the non – payment of their invoices and also stating that their reports must not be used by the Road Accident Fund in court proceedings. The practice by the medical experts is unfortunate and the approach is part of a concerted effort distort what the real dispute is between them and the RAF.
- 3 The RAF is further concern about the involvement of honourable members of the judiciary in the communication by the medical experts relating to a deliberately mischaracterized dispute between them and the RAF, which dispute might end up before the Judiciary for adjudication. This conduct borders on unethical conduct.
- 4 It is apposite at this stage to set out that the medical experts in question were never instructed by the RAF directly. They were allegedly instructed by the RAF former panel of attorneys. The relationship between the RAF and its former panel of attorneys has, at all material times, been regulated by a Service Level Agreement (“SLA”) concluded between the parties.



Centurion: 420 Witch Hazel Road Eco Glades 2 Centurion 0046 | Private Bag X178 Centurion 0046
T +27 12 621 1600 | www.raf.co.za

5 Historically, the RAF's former panel of attorneys were allowed to decide on the medical expert to be instructed and the frequency thereof. There was no rotation system or equitable distribution of work which resulted in some medical experts getting 5 times more instructions than their counterparts in the same field of expertise. The approach clearly and seriously compromised the briefing patterns and the national imperatives of public procurement. The RAF had to decisively deal with the situation and put measures in place which included a provision in the SLA's concluded between the parties to regulate the appointment of expert witness, which includes medical experts. Clause 17 of the SLA concluded between the RAF and its former panel of attorneys provided as follows:

"17. Instructions to expert witness

17.1 The firm will obtain instructions in advance from the Fund to instruct expert witnesses or obtain follow – up reports from expert witnesses and **no expert witness shall be engaged without the prior written authorization of the Fund.**

17.2 The Fund will select the expert to be engaged. Such selection may, at the sole discretion of the Fund, be made in consultation with the Firm.

17.3 In the event of paragraphs 17.1 and 17.2 not being complied with when an expert witness is instructed, **the Fund shall not be liable for any fees charged by such expert witness...."**

6 The RAF has extensively considered the issue of outstanding invoices and established that a significant number of the backlog and unpaid invoices arises from unauthorized instructions of expert witness. This was done in breach of the abovementioned clauses 17.1 and 17.2 of the SLA.

7 As a schedule 3A entity, the RAF is regulated by the Public Finance Management Act which enjoins the RAF to ensure that it pays for invoices in respect of work / services that have been procured in accordance with the relevant applicable framework. In this instance, it is required to pay for invoices in respect of services procured in compliance with the SLA. Any payment by the RAF in respect of work / services procured contrary to the provisions of the SLA will be regarded as irregular expenditure in terms of the PFMA.

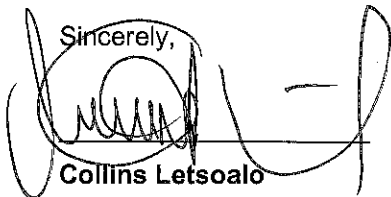
8 Clause 17.3 of the SLA clearly provides that where the provisions of paragraphs 17.1. and 17.2 are not complied with, the Fund shall not be liable for the fees charged by such an expert. This means that any former panel of attorney who instructed an expert witness without the necessary written authorization by the Fund assumed liability in respect of the services so secured. Consequently, any claim by an expert witness who was instructed by the former panel of attorneys in contravention of clause 17 of the SLA lies against the attorneys.

9 The RAF is of the view that the situation of non – payment faced by the medical expert is as a consequence of the negligence of the former panel of attorneys who at all material times were aware of the provisions of the SLA but decided to act in contravention thereof. The medical experts may have to consider their legal



options available which includes but not limited to approaching the Legal Practitioners Insurance Indemnity Fund.

- 10 The RAF shall continue to ensure that it fully execute its legislative mandate of compensating road accident victims and ensure compliance with the PFMA, National Treasury Regulations and other regulatory framework applicable in its operations.

Sincerely,


Collins Letsoalo
Chief Executive Officer: Road Accident Fund