



## MEDIA RELEASE

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### What is the legal status of CMS circulars?

**28 July 2015:** CMS circulars are regarded by the regulator as legally binding, but this is not the case. Paul Midlane, General Manager: Legal Governance Risk Compliance, Medscheme, made this point emphatically at the 16<sup>th</sup> Board of Healthcare Funders conference with detailed reference to the Constitution, the Medical Schemes Act and the Promotion of Administrative Justice Act (PAJA). “All of these legislative measures do not support the legality of the circulars, which often contain unilateral, far-reaching decisions that potentially impact the way we do business in a fundamental way. Neither do they support the CMS’s punitive measures against schemes deemed to be in contravention of the apparent ‘directives’,” he said.

Circulars are not defined in the Medical Schemes Act, neither are they mentioned in the regulations. Every scheme is governed by the Act and its own rules. The regulator is not empowered to govern outside the Act, and its function beyond it is solely an oversight one.

“We’ve been misled into thinking a circular is the final word, but it isn’t and PAJA protects against procedurally unfair administrative action. Only the trustees of a medical scheme are ultimately responsible for the guidance of the scheme and its compliance with its own laws,” he said.

“A circular is not a directive and it cannot be. It creates no enforceable legal rights or obligations, as these cannot be imposed in the absence of procedural fairness. There is therefore no such thing as contravention of a circular. You can only contravene the Medical Schemes Act or specific scheme rules. He concluded by encouraging the industry to stand its ground. “A circular is nothing more than an FYI. You need to take it for what it is.”

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