THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: Yes☐/ No ☒
(2)	OF INTEREST TO OTHER JUDGES: Yes☐ / No ☒
(3)	REVISED: Yes ☒ / No ☐

Date: 30 April 2026 [redacted]

Case 2026-090602

In the matter between:

3SXITY HEALTH (PTY) LTD Applicant

and

COUNCIL FOR MEDICAL SCHEMES Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] In this urgent application (Part A), the applicant seeks interim relief arising from the respondent's failure to determine the applicant's application for renewal of its accreditation as a Managed Health Care Organisation ("MHCO") in terms of Regulation 15B of the General Regulations[1] promulgated under the Medical Schemes Act[2] ("the Act") before the expiration of the accreditation.

[1] GNR 1262 of 20 October 1999 ("the Regulations").
[2] 131 of 1998.

[2] The relief is framed as an order compelling the respondent to renew its accreditation, alternatively an order directing that the accreditation be deemed to continue on the same terms and conditions as before, pending the final determination of review proceedings and/or an appeal to the Appeal Board contemplated in the Act. The applicant further seeks an order compelling the respondent to provide documents and information underlying the serious allegations raised in a letter dated 19 March 2026, and to afford the applicant a reasonable opportunity to respond to those allegations.

[3] What makes this somewhat more complicated is that the respondent scheduled a board meeting for 29 April 2026, at which they will decide on the accreditation. The respondents thus say that this application is premature; they should have waited for the board's decision. The applicant, however, makes it clear that what it is reviewing is not the decision to be made, but the failure to make the decision[3] before the expiration of the date, and, further, the procedural irregularities in the decision to be made, in that they could not properly exercise their right to *audi*. The facts will clarify these positions.

Background

[4] The applicant is a company conducting the business of a managed health care organisation ("MHCO") and has provided this service for decades, with its accreditation routinely renewed. The respondent is the Council for Medical Schemes ("CMS"), the statutory regulator established under the Act. It is the decision-maker for the accreditation and renewal under Regulation 15B.

[5] The applicant provides services to Siswe Hosmed Medical Scheme and SABMAS. It can provide these services only if it is accredited. The applicant's accreditation expired on 25 April 2026. It is common cause that it submitted its accreditation application on 16 January 2026, more than the required three months before the expiry date.

[3] It relies on *Oosthuizen's Transport (Pty) Ltd v MEC, Road Traffic Matters, Mpumalanga* 2008 (2) SA 570 (T) and *Director: Mineral Development, Gauteng Region v Save the Vaal Environment* [1999] ZASCA 9.

[6] During 2024 and 2025, concerns arose regarding the applicant's affairs, including a KPMG investigation concluded in 2025 and reports generated in the context of curatorship and other regulatory oversight. This culminated in a letter dated 19 March 2026, in which the respondent set out a series of concerns regarding whether the applicant remained fit and proper, whether it had the necessary systems, resources, skills and capacity, and whether it met the regulatory requirements for renewal.

[7] The applicants submit that the letter was framed very generally, that some instances showed that a conclusion had already been reached, and that there was no underlying documentation or source material to enable them to respond meaningfully. They requested the supporting material, including the full KPMG report, reports and updates from Ms Mpakati and Mr Fleming (the former and current curators), records of meetings, complaints, discussions, and other source material underlying the concerns raised in the 19 March 2025 letter.

[8] On 13 April 2026, the applicant requested that its accreditation remain in place pending a proper process for engaging with the concerns once it receives the documentation. The respondent, in turn, indicated that the board will decide on 29 April 2026 (after the accreditation expires). In other words, the applicant's accreditation lapsed by efflux of time on 25 April 2026, before the respondent decided to renew.

[9] The applicant's case is thus twofold: first, that the respondent failed to make a timely decision in a manner compatible with the regulatory framework; and second, that the process followed by the respondent is not in line with the requirements of procedural fairness and audi alteram partem, as required by the regulations themselves and by section 33 of the Constitution.

[10] The applicant submits that it is not asking me to make a final decision on whether they meet every substantive criterion for renewal. It's rather that they are in a position of losing accreditation before the respondent makes a decision, while at the same time, they do not have access to the information that would enable them to

respond meaningfully to the concerns raised. They submit absent interim relief, they risk devastating commercial consequences.

[11] The respondent opposes this application on several grounds. Firstly, the matter is not urgent, as any perceived urgency is self-created, as the applicant has been aware of the underlying concerns for a considerable time. Second, the application is premature because no final decision on renewal had yet been made when the application was launched, which means the specialist regulatory committee remained seized with the matter. Third, they submit that the applicant has not exhausted internal remedies (relying on section 50(3) of the Act read with section 7(2) of the Promotion of Administrative Justice Act[4] ("PAJA"). Finally, the respondent submits that the applicant is, in substance, seeking pre-litigation discovery and, if it wishes to access the documents, should do so through the proper mechanisms.

[12] This leaves the court with the narrow question of where a regulator delays determination of a renewal application until after the existing accreditation expires, and where the regulated party shows that the process was procedurally unfair, may the Court grant interim restorative and preservative relief pending either a proper decision, review proceedings, or an internal appeal?

[13] The question is further complicated by the fact that the decision had not been taken by the time the application was launched and argued, and was supposedly taken only two days after the hearing. Still, the decision sought to be reviewed by the applicant is not this decision, but rather the failure to make a timeous decision, which muddies the water as to what the effect of any decision made will be. The matters of urgent court are often muddy.

Urgency

[14] While there is some substance to the respondent's argument that the applicant had known for some time of the difficulties that might complicate the renewal, this argument loses force when the request for information needed to enable a meaningful response is taken into account. After the 19 March 2026 letter, which I agree makes

[4] 3 of 2000.

general ascertains (for instance, referring to complaints without stating what they were), the applicant asked for the information on which these general ascertains were based to reply meaningfully. At the heart of this is a KPMG report released in June 2025, which the applicant says it received only as an executive summary, not the full report. With the accreditation already expired[5] and the applicant having no opportunity to access the information needed to respond, there is no substantial redress in due course, and the applicant, if successful, would need an interim arrangement pending whatever actions it needs to take in Part B.

The merits

[15] Regulation 15B(3) provides that, in considering an application for accreditation, the Council may take into account information derived from whatever source only if such information is disclosed to the applicant and the applicant is given a reasonable opportunity to respond thereto.

[16] Regulation 15B(4) requires the Council, after considering an application, either to grant it if satisfied that the relevant criteria are met, or to refuse it with reasons. Regulation 15B(5) provides that, if accreditation is granted, it is granted for twenty-four months and must be accompanied by a certificate clearly specifying the expiry date.

[17] Regulation 15B(7) provides that a person wishing to renew accreditation must apply for renewal at least three months before the date of expiry, and must furnish the Council with such information as the Council may require.

[18] The structure thus envisions a timely application to ensure that the Council will use the period before expiry to request further information, enabling it to decide the accreditation lapses. Hence, the three-month requirement. Otherwise, an MHCO could find itself in a legal vacuum, with its accreditation expiring before the Council decides on the renewal application.

[5] It should be noted that the applicant did try and enroll the matter on the previous week's urgent roll before the expiration of the accreditation, but on severe truncated timeframes, which enrollment was not allowed, and they were advised to enroll it on the normal "Thursday for Tuesday" urgent roll. This, of course, added an extra layer of complication to the matter in that by the time the matter was heard, the accreditation expired.

[19] Yet this is exactly the position the applicant finds itself in. Its accreditation expired by efflux of time on 25 April 2026, and Council would only thereafter decide whether renewal should be granted, perhaps with retrospective or backdated effect if it is renewed. This is not a clean approach and will result in a period during which the MHCO is no longer accredited, but is expected to await a decision on whether it has been accredited after all.

[20] This regulatory vacuum is not contemplated in Regulation 15B, where, on a purposive reading of the regulation, an MCHO must apply timeously for renewal to enable Council to do what it needs to do and make a timeous decision before the expiration of the accreditation.

[21] This the respondent did not do. Instead, it stated that a decision would be made only after the accreditation expired. Moreover, the respondent seeks to rely on adverse material from a variety of sources, without providing the applicant with these documents to reasonably meet the allegations.

[22] I have already indicated that I agree with the applicant that the 19 March 2026 letter was insufficient to meet the allegations. The applicant was forewarned that it does not meet two of the three regulatory criteria. Still, many of the allegations were framed broadly and abstractly, which would not enable a meaningful answer. The applicant requested the specific documents it would need to do so.

[23] Regulation 15B(3) is clear on this. It states

> (3) In considering an application for accreditation in terms of this regulation, the Council may take into consideration any other information regarding the applicant, <u>derived from whatever source, if such information is disclosed to the applicant and she or he is given a reasonable opportunity to respond thereto</u>.

[24] The information that the Council relies on "derived from whatever source" must be disclosed to the applicant. Not only the conclusions reached, but the premises on which those conclusions were based. The respondent's submission that the applicant

should have resorted to PAIA is thus unpersuasive, as the regulations themselves place an obligation on the respondent to provide that information.

[25] The conclusion that I reached above should not be interpreted as a finding that the concerns reflected in the letter or the report are unfounded. That is not before me, and the conclusions reached by the respondent in its 19 March 2026 letter may be well-founded. The point is simply that the applicant was entitled to confront them fairly and to answer to them, before the consequences of the non-renewal took effect.

[26] As to the respondent’s argument that the applicant had to exhaust internal remedies, that may be so in instances where there is a straightforward review of a completed decision. Section 7(2)(c) of PAJA would then be an obstacle to the applicant’s case. The present matter, however, is somewhat unique. At the time the application was launched and argued, no final decision refusing renewal had been made (although it was contemplated, based on the correspondence between the parties in the preceding months). The argument in part A is that the respondent failed to make a timely decision on the renewal of the application before its expiry and did so without complying with Regulation 15B(3).

[27] On these facts, section 7(2) of PAJA does not, in my view, deprive me of the power to grant purely interim, preservative relief. Internal remedies do not resolve the immediate problem, as there is no decision to appeal before the harm resulting from the non-renewal materialises.

[28] This does not undermine the internal appeal remedy. Once the respondent has made a lawful decision after a fair process, the applicant will remain obliged to pursue the internal remedy required by the Act. The present relief is therefore temporary and preservative, and not meant to substitute the decision of the respondent.

[29] Which brings me to the next question of whether it is competent to preserve accreditation that has lapsed. An analogous situation arose in *Olifantsfontein Resources Facility (Pty) Ltd v MEC: Gauteng Department of Agriculture, Rural*

Development and Environment,[6] where the Court granted urgent interim relief pending review by authorising the applicant to conduct and perform all activities, exercise all rights and carry out all obligations permitted in terms of an amended waste management licence, notwithstanding an adverse administrative appeal decision that had set the licence aside. The court did so as an interim, just and equitable arrangement pending final determination of the review.

[30] While the factual situation differs, the principle provides guidance. The relief need not be understood as this Court granting fresh accreditation in substitution for the respondent's statutory power. That would be improper. Rather, it is restorative and preservative relief, directed at maintaining, for an interim period, the position that existed before the respondent failed to decide timeously and in a procedurally compliant manner, which created potentially irreversible consequences.

[31] As long as such relief is temporary and narrow, and preserves the respondent's power to make the substantive decision once a procedurally fair process has occurred, such relief is competent.[7]

[32] That then leaves the determination of whether the applicant is entitled to the interim interdict.[8] The applicant has shown a prima facie right, grounded in Regulation 15B(3) and the broader right to procedurally fair administrative action. On the papers, the loss of accreditation jeopardises the applicant's existing contractual relationships, its business continuity and the employment of its workforce. This harm is manifest. The balance of convenience favours a limited order preserving the status quo. If no interim relief is granted, the applicant may suffer irreversible commercial and reputational harm before a lawful process is completed. The respondent remains the substantive regulatory authority and remains free to determine the renewal application after a fair process, which means it suffers less harm. Any concerns it may have regarding the beneficiaries' interests[9] can be addressed through other processes under the regulations. The applicant did not have any alternative remedies at the time

[6] [2026] ZAGPJHC 339.
[7] In terms of PAJA section 8 and in terms of section 172(1)(b) of the Constitution, a court may make an order that is just and equitable in constitutional matter, such as administrative actions by public institutions.
[8] *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.
[9] Section 7(a) of the Act.

of the hearing and may appeal once a decision is properly made. The applicant thus satisfied the requirements of an interdict.

[33] As to the relief, the applicant's prayer that the Court "renew" the accreditation is too intrusive of the respondent's statutory function, even though the effect of the order I will make is the same. Still, I would rather frame it as limited interim relief, authorising the applicant, pending the defined further process, to conduct all activities, exercise all rights, and carry out all obligations permitted under its accreditation as it stood immediately before 25 April 2026. It is thus not a decision on entitlement to renewal, nor does it make any finding on KPMG or related allegations, or on whether the applicant complies with the renewal criteria. It merely preserves the applicant's position from being lost before the legality and fairness of the process can be vindicated.

[34] The applicant sought costs on the attorney-and-client scale should they be successful, on the basis that this is premised on the respondent having made a timely decision. The time constraints of the urgent court do not allow me to go into detail on the concerns I have regarding the applicant's conduct over the course of the year, as evidenced in the papers. The acrimony between the parties has no single source. The matter is, however, sufficiently complex and involves weighty issues, warranting a scale C cost order.

Order

[35] The following order is made:

1. The applicant's non-compliance with the Uniform Rules of Court relating to forms, service and time periods is condoned, and this matter is heard as one of urgency in terms of Rule 6(12).
2. Pending the final determination of the relief sought in Part B of this application and/or of any further timeously instituted judicial review proceedings to be instituted by the applicant in respect of the decision regarding the renewal of its accreditation as a Managed Health Care Organisation in terms of Regulation 15B(7) of the General Regulations promulgated in terms of the Medical Schemes Act, 1998, under GNR 1262 of 20 October 1999, and/or

an appeal to the Appeals Board of the Council for Medical Schemes against the respondent's failure or refusal to renew the applicant's accreditation as an MHCO or at all, whichever comes last, the applicant is authorised to conduct and perform all activities, exercise all rights and carry out all obligations permitted in terms of its accreditation as a Managed Health Care Organisation as it stood immediately before 25 April 2026, subject to the same terms and conditions that were applicable thereto.

3. Within 30 days of this order, the respondent shall provide the applicant with the documents and information reasonably necessary to enable the applicant to respond meaningfully to the concerns and allegations set out in the respondent's letter dated 19 March 2026, including, to the extent applicable, the categories of material identified in prayer 3 of Part A of the notice of motion.

4. After providing the documentation referred to in paragraph 3 above, if a response is still required of the respondent, the respondent shall afford the applicant a reasonable opportunity, not exceeding three months, to provide its response to the allegations contained in the Respondent's letter dated 19 March.

5. The costs of Part A of this application, including those of two counsel, shall be paid by the Respondent on Scale C.

[redacted]

WJ du Plessis
Judge of the High Court, Gauteng Division, Johannesburg

Date of hearing:	28 April 2026
Date of judgment:	30 April 2026
For the applicant:	JPV McNally & PK Sila instructed by Webber Wentzel Attorneys
For the respondent:	J Brett SC & D Matlatle instructed by Mothle Jooma Sabdia