



THE FINANCIAL SERVICES TRIBUNAL

CASE NO. PFA16/2025

In a matter between:

PHILLIP LETSELA

APPLICANT

and

**ALEXANDER FORBES RETIREMENT FUND
(PROVIDENT SECTION)**

FIRST RESPONDENT

SMOLLAN GROUP PENSION FUND

SECOND RESPONDENT

PACK N STACK (PTY) LTD

THIRD RESPONDENT

PENSION FUNDS ADJUDICATOR

FOURTH RESPONDENT

TRIBUNAL PANEL: Judge LTC Harms (Chair), Prof M Sigwadi

Date of Decision: 01 September 2025

Summary: Reconsideration of a decision of the Pension Funds Adjudicator (30M) in terms of section 230 of the FSR Act - Payment of a retirement benefit – Fund rules - Lump sum versus annuity

DECISION

THE PARTIES

1. The Applicant is Mr Letsela, a former employee of Pack 'n Stack (Pty) Ltd and a member of the Alexander Forbes Retirement Fund (Provident Section).
2. The First Respondent is the Alexander Forbes Retirement Fund (Provident Section) ("the Fund").
3. Smollan Group Pension Fund is the Second Respondent.
4. Pack 'n Stack (Pty) Ltd, the Applicant's erstwhile employer, is the Third Respondent.
5. The Fourth Respondent is the Pension Funds Adjudicator ("the Adjudicator"), the statutory ombud as defined in section 1(1) of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") and is established in terms of the Pension Funds Act 24 of 1956 ("the PFA").
6. The parties waived their right to a formal hearing, and this is consequently the decision of the Tribunal under section 234(1) of the FSR Act.
7. Section 230 of the FSR Act provides the basis for an appropriate Applicant to lodge an application for consideration and seek appropriate relief.

THE FACTS

8. This is a reconsideration application under section 230(1) of the FSR Act against the decision taken by the Adjudicator in terms of section 30M of the PFA.
9. The Adjudicator's decision was about the Fund's refusal to pay the Applicant's full pension benefit as a cash lump sum.
10. The Applicant was employed by Smollan. He became a member of the Smollan Group Pension Fund on 01 July 2011 and remained a member until 31 August

2017. Members of the Smollan Group Pension Fund, including the Applicant, together with their values were transferred in terms of section 14 of the PFA to a new fund, Alexander Forbes Retirement Fund ("the Fund"), on 01 September 2017 under the participation of the employer. An amount of R 93 654. 53 was transferred to the Fund on 12 October 2018, and consequently the Applicant became a member of the Fund. He retired on 31 May 2024.

11. The Applicant sought to have his full pension benefit (100% cash lump sum) paid to him. The Fund refused this request and that decision led to the Applicant lodging a complaint before the Adjudicator on 17 September 2024. He requested the Adjudicator to investigate the matter and order the Fund to pay his full retirement benefit as a lump sum.
12. The Adjudicator found that the complainant (Applicant) had failed to establish a case against the Fund and determined that the Fund acted lawfully in terms of its rules and the revenue laws (Income Tax Act 58 of 1962) in relation to the payment of the benefit due to the Applicant upon retirement. She dismissed the Applicant's complaint on 28 February 2025.
13. The Adjudicator's determination was premised on the ground that the Applicant was a member of a pension fund at the time of his retirement and that the retirement benefit that is due to the complainant (Applicant) exceeds the *de minimis* amount of R 247 500. She concluded that because of this the Fund was bound by the revenue laws and the rules not to pay the Applicant's benefit as a lump sum.

GROUNDS FOR RECONSIDERATION

14. The Applicant is aggrieved by the determination of the Adjudicator and, for that reason, lodged this application for reconsideration.

15. Before this Tribunal the Applicant's grounds for reconsideration are essentially the same as his complaint to the Adjudicator. The issue to be determined is whether the Fund is correct not pay the Applicant's pension full amount as a lump sum.

16. The Applicant now seeks to set aside the Adjudicator's determination on *inter alia* the following basis:

- a. He contends that when the Alexander Forbes Pension Funds were consolidated in January 2024, he was neither consulted nor informed.
- b. He submits that he will lose both the property and the R50 000 that he paid as a deposit to purchase the property should he not be paid his retirement benefit as a lump sum. The Tribunal is of the view that the Applicant's offer to purchase a property is a personal reason.
- c. The Applicant's argues that the "legislation" of March 2021 that changed the rules and amounts that are payable to fund members at retirement is applicable to him. He is requesting the Tribunal to order the Adjudicator to reconsider her "decision based on implemented rule of March 2021 particularly the age policy".¹

17 The Applicant was older than 55 years on 1 March 2021. The Taxation regime provides that any amount that was contributed into a provident fund by a member

¹ See Part A, p 6, para 8 of the Applicant's application for reconsideration, found in p 10 of the Tribunal Record.

who was older than 55 years on 1 March 2021 should not be taken into account in calculating the value of the retirement interest.

- 18 It is not in dispute that if the Applicant's total retirement interest in the Fund was less than R 247 500 at retirement, he could have claimed his whole retirement benefit in a lump sum.
- 19 The Fund explained that its rules do not provide the option to pay a retirement benefit as 100% cash lump sum. It is a trite legal principle that the fund rules govern the benefits payable to all its members.
- 20 The Fund submits that it would be acting contrary to the Income Tax Act,² the Pension Funds Act and its rules should it acquiesce to the Applicant's request.
- 21 The Adjudicator in her determination and further reasons and the Fund in its submission correctly state that the Fund is bound by the Act and its rules.

DISCUSSION

- 22 While it may be that the Determination appears contradictory in certain aspects, the facts gleaned from the Record, and in particular the Adjudicator's Further Reasons filed in terms of Rule 13 and the response from the Fund to the Adjudicator dated 18 October 2024 make it unassailable that the Determination was ultimately correct and that the Applicant was not entitled to the full payment of his retirement benefit as a lump-sum. In this regard, the relevant portion of the Fund's response is set out below:

² The Income Tax 58 of 1962 provides that not more than one third of the total value of the retirement interest may be commuted for a single payment. The Act further provides that the remaining two thirds of the retirement interest must be paid as an annuity.

Investigation done by the Fund.

Upon receipt of the complaint, we investigated the matter thoroughly and found the following:

1. According to our records, the complainant joined the Fund on 1 September 2017, when the Employer's participation commenced. Prior to this date, the Employer was a participant of the Smollan Group Pension Fund and the complainant was its member.
2. The complainant's benefit from Smollan Group Pension Fund was transferred into the Fund as a result of a section 14 transfer. A transfer value in the sum of R93 654.53 was received and paid into the Fund. Contributions were received from the Employer, on behalf of the complainant for the period from 30 September until 31 December 2023. A copy of the complainant's member transaction history marked as **Annexure A** is attached for your records.
3. Although the Employer was a participant of both the pension and provident sections of the Alexander Forbes Retirement Fund, the complainant only joined the pension section and did not belong to the provident section prior January 2024. From 1 January 2024, the pension and provident sections of the Alexander Forbes Retirement Fund were consolidated.
4. The complainant's accumulated fund credit, in the amounts to **R260 965.58**. A copy of the fund credit letter is attached as **Annexure B** for your records. This amount is made up of a transfer value from the Fund, representing contributions received prior January 2024 and the benefit from Smollan Group Pension Fund plus contributions for the period 31 January 2024 to 31 May 2024. A copy of the complainant's member transaction history marked as **Annexure C** is attached for your records. On 28 May 2024, we received the complainant's completed retirement claim form, indicating the complainant's exit in the Fund is effective 31 May 2024.
5. The *de minimis* amount for pension funds, pension preservation funds and retirement annuity funds has increased from R75 000 to R247 500 from 1 March 2016. If the member's total retirement interest in any of these funds is less than R247 500 at retirement, the member can take his whole retirement benefit in a lump sum. In the complainant's case, his benefit exceeds the minimum amount. Furthermore, the rules of the Fund do not permit for the full payment of the retirement benefit as a lump-sum. Therefore, he cannot be paid in full and must make an election of whether to receive a pension with the two-thirds of his benefit or purchase a living annuity.

23 In the circumstances, the Applicant's application for a reconsideration must fail.

ORDER

(a) The Application for Reconsideration is dismissed.

Signed at PRETORIA on this 01st day of September 2025 on behalf of the Panel.

___Sgd Prof/Dr M Sigwadi___

Prof/Dr M Sigwadi (Member)

With the Panel consisting also of Judge LTC Harms (Chair of the Panel)