

Financial Services Tribunal decision to uphold the FSCA decision to remove Trustees and the Principal Officer from the PSSPF and to impose penalties in their personal capacity have wide ranging implications for trustees and public officers

On 5 August 2022 the Financial Sector Conduct Authority (“FSCA”) announced that it had taken regulatory action against the (now former) Principal Officer, current and former trustees of the Private Security Sector Provident Fund (“PSSPF”), following a long, detailed and complex investigation (see attached previous statement). Various individuals applied to the Financial Services Tribunal (“Tribunal”) for reconsideration of the FSCA’s decisions.

The FSCA welcomes the ruling by the Tribunal on 9 May 2023 in favour of the FSCA’s regulatory action against trustees and the Principal Officer of the PSSPF. This ruling has far reaching implications for trustees and Principal Officers, as it confirms the powers of the FSCA to remove such officers from the boards of funds, as well as the feasibility of imposing penalties in the personal capacity of such representatives. The judgement reiterated the role and responsibilities of a Principal Officer and confirms the view of the FSCA that a Principal Officer holds a fiduciary responsibility towards the stakeholders in the fund. The Tribunal further agrees with our view that we can take action irrespective of the office you hold on other funds.

This is an important and unprecedented decision for the retirement fund industry as it upholds the importance of good governance and prudent conduct by trustees and Principal Officers of retirement funds. The FSCA expects both trustees and Principal Officers to comply with their fiduciary duties and to conduct themselves ethically, lawfully, diligently and properly. While the FSCA accepts that the complexity of overseeing retirement funds could at times result in genuine mistakes by board members, certain conduct which can be construed as deliberate or grossly reckless, self-enriching, and an abuse of position with ulterior motives or malicious intent, will be sanctioned.

Executive Committee:

Commissioner: U. Kamlana | **Deputy Commissioners:** A. Ludin | K. Gibson | F. Badat

Furthermore, the statutory management of the PSSPF has been terminated with effect from 30 April 2023 as the statutory manager has successfully discharged his duties in accordance with his appointment. An Enforceable Undertaking has also been entered into with the PSSPF, which will see more independent trustees on its board.

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