



Case No: A40/2025

In a matter between:

**BARGAINING COUNCIL FOR THE CONTRACT
CLEANING INDUSTRY (KZN) PROVIDENT FUND**

1st APPLICANT

NBC FUND ADMINISTRATION SERVICES (PTY) LTD

2nd APPLICANT

and

**FINANCIAL SECTOR CONDUCT
AUTHORITY**

RESPONDENT

TRIBUNAL PANEL: Judge LTC Harms & K.D Magano

Date of Decision: 3 June 2026

Summary: *Application for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 – administrative penalty imposed under section 37(2) of the Pension Funds Act 24 of 1956 for the late submission of annual financial statements – fund failed to submit annual financial statements within the prescribed period despite being granted an extension – non-compliance with section 15(1) common cause – fund afforded notice*

of intention to impose penalty and opportunity to make representations before decision taken – representations considered by FSCA – subsequent communication of final decision to former employee did not render the process procedurally unfair where the fund was afforded audi before the decision was made and suffered no prejudice – no basis established for interference with the exercise of the FSCA's discretion – application for reconsideration dismissed.

DECISION

INTRODUCTION

1. This is an application for reconsideration brought in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 (*"the FSR Act"*). The applicants seek reconsideration of the decision of the Financial Sector Conduct Authority (*"the FSCA"*) to impose an administrative penalty of R15 000 on the first applicant in terms of section 37 of the Pension Funds Act 24 of 1956 (*"the Pension Funds Act "*) for the late submission of its annual financial statements for the year ended 31 December 2023.
2. The first applicant, the Bargaining Council for the Contract Cleaning Industry (KwaZulu-Natal) Provident Fund (*"the Fund"*), is a registered pension fund as contemplated in the Pension Funds.
3. The second applicant, NBC Fund Administration Services (Pty) Ltd (*"NBC"*), is the administrator of the Fund and is responsible, amongst other things, for administering the Fund and performing certain statutory and regulatory functions on its behalf.

4. Where reference is made to the Fund and NBC collectively, they will be referred to as "*the applicants*".
5. The FSCA is the regulatory authority responsible for supervising and enforcing compliance with the Pension Funds Act.
6. The application for reconsideration was not brought within the period prescribed by section 230(2)(b) of the FSR Act. The applicants accordingly sought condonation for the late filing of the application.
7. The FSCA does not oppose the application for condonation.
8. Having considered the explanation furnished by the applicants and there being no opposition thereto, condonation for the late filing of the application is granted.
9. The Tribunal accordingly proceeds to consider the merits of the application for reconsideration.
10. The parties have waived their right to an oral hearing and have elected to have the matter determined on the papers. The Tribunal is accordingly required to decide the application on the record before it.

FACTUAL BACKGROUND

11. It appears from the record that the material facts giving rise to the present application are largely common cause.

12. In terms of section 15 of the Pension Funds Act, the Fund is required to submit audited annual financial statements to the FSCA, within the prescribed period following the end of each financial year.
13. The Fund's annual financial statements for the financial year ended 31 December 2023 were due for submission on 30 June 2024.
14. Before the expiry of that period, the Fund applied to the FSCA for an extension of time within which to submit the 2023 annual financial statements. The FSCA granted the extension, and the Fund was afforded until 30 September 2024 to submit the outstanding financial statements.
15. It is common cause that the Fund failed to submit the 2023 annual financial statements by the extended deadline of 30 September 2024.
16. On 6 December 2024, the FSCA issued a notice of intention to impose an administrative penalty in terms of section 37 of the Pension Funds Act. In that notice, the FSCA recorded the Fund's non-compliance, informed the Fund of its intention to impose a penalty, and invited the Fund to make representations before a final decision was taken.
17. On 30 January 2025, the Fund submitted written representations to the FSCA. In those representations, the Fund requested that the proposed penalty be waived and explained that the delay in submitting the financial statements arose from governance and administrative challenges, as well as historical backlogs in the finalisation of previous annual financial statements.

18. Having considered the representations, the FSCA decided to impose an administrative penalty of R15 000 on the Fund in terms of section 37 of the Pension Funds Act.
19. On 8 July 2025, the FSCA communicated its decision to impose the administrative penalty. It subsequently emerged that the decision had been sent to a person who was no longer employed by the Fund's administrator.
20. On 19 November 2025, the FSCA resent the decision to the correct recipient.
21. The applicants contend that the FSCA communication of the decision to a former employee rendered the process procedurally unfair. The FSCA, on the other hand, maintains that the Fund had already been afforded an opportunity to make representations before the decision was taken and that any error in communicating the final decision did not affect the validity of the decision-making process.
22. The applicants consequently launched the present application for reconsideration. The central issue for determination is whether the Tribunal has any basis to interfere with the FSCA's decision to impose the administrative penalty.

RELEVANT STATUTORY PROVISIONS

23. Section 15(1) of the Pension Funds Act requires every registered fund to furnish the FSCA, within six months after the end of each financial year, with prescribed audited financial statements.¹

¹ Subject to the provisions of subsection (4), every registered fund shall, within six months as from the expiration of every financial year, furnish to the registrar such statements in regard to its revenue,

24. Section 37(2) of the Pension Funds Act empowers the FSCA to impose an administrative penalty where a pension fund, administrator or third party fails to submit, within the prescribed period, any statement, report, return, document or information required to be submitted in terms of the Pension Funds Act.² The penalty may not exceed R1 000, or such other prescribed amount, for every day during which the failure continues.
25. These provisions serve an important regulatory purpose. The timeous submission of annual financial statements enables the FSCA to exercise effective oversight over retirement funds and to monitor their financial position in the interests of fund members.
26. The issue in dispute therefore revolves around the FSCA's exercise of its discretionary powers under section 37(2) following the Fund's failure to submit its annual financial statements for the year ended 31 December 2023 within the prescribed period.

ANALYSIS AND FINDINGS

expenditure and financial position as may be prescribed, duly audited and reported on by the auditor of the fund. Penalties

² The registrar may impose an administrative penalty in the case of any failure by a pension fund, administrator or third party to submit to the registrar or any other person within a period specified in terms of this Act or in a directive or condition imposed by the registrar in terms of the Act, any scheme, statement, report, return or other document or information required in terms of this Act to be submitted, not exceeding R1 000 or such other amount prescribed by the registrar for every day during which the failure continues.

27. The principal complaint advanced by the applicants is that the FSCA acted unfairly by communicating the penalty decision to a person who was no longer employed by the second applicant.
28. The record shows that the FSCA became aware that the person to whom the decision was initially sent was no longer employed by the second applicant. It was only on 19 November 2025 that the FSCA re-sent the decision to the correct recipient.
29. The Fund does not dispute that the decision ultimately came to its attention. The very fact that the present application for reconsideration was instituted demonstrates that the Fund became aware of the decision and was able to exercise its right to challenge it before this Tribunal. The applicants have therefore not established that they suffered any prejudice arising from the initial misdirection of the communication.
30. The real question before the Tribunal is not whether the FSCA's communication of the final decision was flawless. The question is whether the process leading to the decision was procedurally unfair or otherwise provides a basis for interfering with the FSCA's decision.
31. It is clear from the record that, before taking its decision, the FSCA communicated its intention to impose an administrative penalty and afforded the Fund an opportunity to make representations. The Fund availed itself of that opportunity and submitted representations to the FSCA, which were considered before the decision was taken. The requirements of procedural fairness were therefore satisfied. The

complaint relating to the communication of the final decision does not detract from the fact that the Fund was afforded a hearing before the decision was made.

32. The fact that detailed representations were submitted demonstrates that the first applicant was aware of the proposed enforcement action and afforded a meaningful opportunity to present its version to the FSCA prior to the decision.
33. Furthermore, the applicants do not meaningfully challenge the factual basis upon which the administrative penalty was imposed. It is common cause that the Fund failed to comply with section 15(1) of the Pension Funds Act by not submitting its annual financial statements within the prescribed period. It is equally common cause that the FSCA granted the Fund an extension until 30 September 2024 and that the Fund nevertheless failed to comply with the extended deadline.
34. That non-compliance triggered the provisions of section 37(2) of the Pension Funds Act and empowered the FSCA to consider the imposition of an administrative penalty. Beyond explaining that the delay was occasioned by governance and administrative difficulties, the applicants do not dispute the existence of the non-compliance itself, nor do they contend that the FSCA lacked the statutory power to impose a penalty.
35. The record further shows that those explanations were placed before the FSCA as representations and were considered before the decision was taken. The fact remains that, notwithstanding the extension granted by the FSCA, the Fund failed to meet its statutory obligations. In those circumstances, the Tribunal is unable to

conclude that the FSCA acted unlawfully or improperly in imposing an administrative penalty.

36. Having reconsidered the matter on the record before it, the Tribunal is not persuaded that there is any basis to interfere with the FSCA's decision to impose the administrative penalty.

ORDER:

37. As a result, the following order is made:

41.1. The application for reconsideration is dismissed.

Signed on behalf of the Tribunal panel.

____ *Sdg Adv KD Magano*____
KD MAGANO