Financial Services Tribunal

CASE NO: FSP64/2026

In the matter between:

JABULILE TLHAPANE **Applicant**

And

MOSO CONSULTING SERVICES (PTY) LTD **Respondent**

Tribunal panel: **LTC HARMS (CHAIR) & ADV SM MARITZ**

Decision on Papers:

Date of decision: 19 August 2026

Summary: Reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 of a debarment effected under section 14(1) of the Financial Advisory and Intermediary Services Act 37 of 2002 — condonation — debarment effected on the outcome of an employment disciplinary enquiry without compliance with section 14(3) — application unopposed – debarment set aside without remittal.

DECISION

A. INTRODUCTION

1. The applicant seeks reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") of a decision of the respondent, MOSO CONSULTING SERVICES (PTY) LTD ("the respondent"), taken on 12 April 2024 to debar her in terms of section 14(1) of the Financial Advisory and Intermediary Services Act 37 of 2002 ("the FAIS Act"). The ground recorded on the prescribed notification form, and on the register of debarred persons maintained by the Financial Sector Conduct Authority ("the Authority"), is that she does not comply with the personal character qualities of honesty and integrity.

2. The respondent is an authorised financial services provider. Its business includes acting as a medical scheme broker for large employer clients, among them a metropolitan municipality.

3. The application was delivered on 19 June 2026, some twenty-six months after the debarment, and condonation is sought. In terms of the Tribunal rules an application for reconsideration must be made within 60 days after the applicant was notified of the decision or within 30 days after the applicant was given a statement of reasons under section 229 or such longer period as may on good cause be allowed by the Tribunal. The applicant was never notified of the debarment at all. She learnt of it only when a prospective employer conducted compliance checks after a successful interview and informed her that her appointment could not proceed, and she acted promptly thereafter. Her explanation is inherently probable, is borne out by the record, and is accepted by the respondent. The delay is in truth a consequence of the very failure of which she complains. Her prospects of success are strong, the prejudice to her is severe and continuing, and there is no prejudice to the respondent. Good cause has been shown and condonation is granted.

4. The application is not opposed. By letter dated 30 June 2026, signed by its key individual, the respondent records that it does not oppose condonation, that it accepts the applicant's explanation for the delay, and that it consents to the uplifting and removal of the debarment recorded against her name. It advances no defence of the debarment on the merits.

5. The parties waive their rights to a formal hearing. Accordingly, the matter is decided on the documents comprising the record. That the application is unopposed does not relieve the Tribunal of the duty to satisfy itself that a proper basis exists for the relief sought. A debarment is administrative action taken under a statutory power, it is recorded on a public register maintained in terms of section 14(7) of the FAIS Act, and it exists for the protection of the public. It is not a matter which the parties may dispose of by agreement between themselves.

B. FACTUAL BACKGROUND

6. The applicant was employed by the respondent as its Manager: Customer Services. On her undisputed account, her responsibilities were administrative and concerned customer service operations and the management of the respondent's call centre. She did not handle client funds, provide financial advice, act as a broker, perform sales functions or serve as a regional manager. In relation to members of the medical schemes administered through the respondent, she arranged and conducted courtesy calls and compiled reports, which were reviewed and approved by her senior manager before submission.

7. The respondent's prescribed notification form describes the applicant as a debarred representative, but nothing else in the record establishes that status. Section 1(1) of the FAIS Act defines a "*representative* "as a person who renders a financial service to a client for or on behalf of a provider. It expressly excludes a person rendering clerical, technical, administrative or similar services in a subsidiary or subordinate capacity where those services neither require the exercise of judgment nor lead a client to a specific transaction in respect of a financial product in response to general enquiries. The respondent produced no employment contract, mandate or extract from the register of representatives which it is required by section 13(3)(a) to maintain. The significance of this omission is addressed below.

8. The conduct giving rise to the debarment occurred in March 2024 and concerned the respondent's brokerage relationship with a municipal client. On

19 March 2024, the municipality's Assistant Director: Salaries informed the respondent's key individual that many members reflected in the February head count report had joined the medical scheme before 2020. She sought instead to establish how may municipal employees had signed broker notes with other brokers. On 20 March 2024, the key individual replied that he received daily movement notifications, which he distributed to the relevant managers, and that he had instructed the applicant to extract information from September 2023 onwards. The exercise was subsequently narrowed to broker-noted members from December 2023.

9. On 25 March 2024 the municipal official escalated the matter, stating that the information should be readily available and that she intended to approach the scheme. At 09h45, the key individual forwarded her email to the applicant, describing the failure to complete the task as bordering on incompetence, and required an answer by 12h00. At 10h18, the applicant reported that she had assigned eight consultants to telephone the members, each with approximately 60 members to verify, but that the scheme would verify only five members per call. At 13h41, she reported that 170 members remained unverified because the scheme would not conduct further verifications, given the volume already undertaken and the effect on its incoming calls. This is independently corroborated by an email from the scheme at 13h25 recording an influx of calls from the respondent's two broker codes, resulting in its internal queues being breached, and enquiring whether the respondent's staff required training to retrieve the information directly from the scheme's adviser platform. The applicant forwarded that email to the key individual at 13h54.

10. At 16h34 that day the applicant forwarded from her work email account to her personal email address an email containing 24 attachments totalling approximately 31 MB. The attachments included production reports for three municipal employers for January 2020 to March 2023, broker transfer correspondence and scheme notifications. A sample page of one report contains members' initials, surnames, identity and membership numbers, broker-note dates, employers and schemes.

11. On 9 April 2024, the key individual notified the applicant to attend a disciplinary hearing on 12 April 2024. She faced two charges of gross misconduct. The first concerned her alleged failure to carry out a reasonable and lawful instruction requested by the municipality. The second alleged dishonesty in that, on or about 25 March 2024, she had transmitted client information relating to 2020 to 2023 to her personal email address without authorisation and following her suspension, thereby compromising the information of more than 5 000 members and breaching material terms of her employment contract. The notice recorded her rights to representation by a colleague, to call witnesses and to state her case. It identified the key individual as the charging officer and the independent chairperson as "*to be advised*". It made no reference to possible debarment, the fit and proper requirements or the applicant's alleged status as a representative. The applicant acknowledged receipt on the same day.

12. The disciplinary hearing proceeded on 12 April 2024. No ruling, reasons, minutes or transcript are before the Tribunal, nor is the chairperson identified. A letter dated 18 April 2024 records only that the chairperson found the applicant guilty as charged and, after considering the mitigating and aggravating circumstances, terminated her employment with effect from 12 April 2024.

13. The applicant was debarment on 12 April 2024, the day of the disciplinary hearing and six days before its written outcome. The key individual completed and signed the debarment notification form on 8 May 2024. The record contains no notice of an intention to debar, no statement of the grounds and reasons for the proposed debarment, no copy of the respondent's written debarment policy and procedure, and no notice to the applicant that she had been debarred.

C. APPLICANT'S GROUNDS OF RECONSIDERATION

14. The applicant contends that she was neither informed that debarment proceedings had been instituted, nor given written notice of an intended debarment. She was afforded no opportunity to make representations or present her version before the decision was taken. She further says that she has never been furnished with particulars of the conduct said to demonstrate

lack of honesty and integrity, relies on the nature of her position and duties described above, and points out that no client suffered financial prejudice or loss.

15. As to the first charge, the applicant relies on the respondent's evidence pack, which records that she was given an exercise to complete. She says this confirms that the task formed part of an assessment rather than her ordinary responsibilities to the client, and that she completed and submitted it, although it was later considered inadequate. She maintains that responsibility for the client's headcount, including terminations and activations, rested with the billing manager, who compiled and submitted the monthly report, and that the regional manager was accountable because the client portfolio fell within that department.

16. As to the second charge, the applicant says that she forwarded the emails because her suspension letter lacked sufficient detail and she did not know what to expect or what information she would require to prepare her response. She contends that there is no evidence that she retained the information for an improper purpose or intended to misappropriate it, and that any allegation to that effect is speculative. She asks that the debarment be found procedural unfair and set aside.

D. THE STATUTORY FRAMEWORK

17. Section 14(1)(a) of the FAIS Act obliges an authorised financial services provider to debar from rendering financial services a person who is or was its representative, if the provider is satisfied, on the available facts and information, that the person no longer meets the requirements referred to in section 13(2)(a), or has materially contravened or failed to comply with the Act. Section 14(1)(b) requires reasons for debarment to have occurred and become known to the provider while the person was a representative. The requirements referred to in section 13(2)(a) are the fit and proper requirements determined under section 6A of the FAIS Act, presently contained in Board Notice 194 of 2017, and include the personal character qualities of honesty and integrity.

18. Section 14(2)(a) requires the provider, before effecting a debarment, to ensure that the debarment process is lawful, reasonable and procedurally fair. Section 14(3) prescribes the procedure. Before debarring a person, the provider must give adequate written notice of its intention to debar, the grounds and reasons for the proposed debarment, and any terms attached to it. It must also provide the person with its written debarment policy and procedure and afford the person a reasonable opportunity to respond. The provider must consider any response before making its decision. It must thereafter immediately notify the person in writing of the decision, the person's rights under Chapter 15 of the FSR Act, and any formal requirements for proceedings before the Tribunal.

19. Section 14(5) requires a debarment in respect of a person who is no longer a representative of the provider to be commenced within six months after that person ceased to be a representative. A debarment decision by a provider constitutes the exercise of a statutory power and administrative action. It is subject to section 14 and the overarching requirements of the Promotion of Administrative Justice Act 3 of 2000.

20. Guidance Notice 1 of 2019 (FAIS), issued by the Authority in terms of section 141 of the FSR Act, is directly applicable. Paragraph 3.4.2 records that a debarment process may form part of employment-related disciplinary proceedings and advises providers to combine their debarment and disciplinary policies and procedures. If that is not done, a provider "*cannot summarily debar a person based on the outcome of a disciplinary hearing*" without complying with section 14(3). Paragraph 3.5.1 states that debarment should not be used to satisfy contractual or other grievances. Paragraph 3.5.3 requires providers to act without bias and recommends that an independent person evaluate the grounds for debarment where the provider might reasonably be perceived as biased.

21. In *Associated Portfolio Solutions (Pty) Ltd and Another v Basson and Others* (554/2019) [2020] ZASCA 64; 2021 (1) SA 341 (SCA) para 31, the Supreme Court of Appeal held that a separate enquiry is not invariably required where the person has already had a proper opportunity to address the conduct relied

upon, and that requiring one in those circumstances would elevate form over substance. The premise is that the person knew that his or her fitness and propriety were in issue and had an opportunity to address them. That reasoning does not assist a provider where the person was never informed that debarment was contemplated.

E. EVALUATION

22. There was no compliance with section 14(3). No notice of an intention to debar was given. The only notice was that of 9 April 2024, requiring the applicant to attend a disciplinary hearing concerning two allegations of gross misconduct under the respondent's disciplinary code. A person reading it would understand that her employment was at risk, but not that her ability to render financial services anywhere in the industry was also at risk.

23. No grounds and reasons for debarment, as distinct from allegations of misconduct, were furnished. The distinction is substantive, not formal. That an employee failed to carry out an instruction or acted dishonestly in breach of her employment contract is framed for an employment enquiry. It does not inform her that the provider considers that she no longer meets the statutory honesty and integrity requirement and intends to debar her on that basis. Nor was she provided with a written debarment policy and procedure, and the record does not establish that the respondent had one. She was given no opportunity to address debarment because she was never told that it was contemplated. She was heard on whether she had committed two disciplinary offences, not on whether she remained fit and proper to render financial services.

24. Nor does the record establish that a separate debarment decision was taken. The disciplinary hearing and debarment occurred on the same day, while the letter conveying the outcome of the hearing, issued six days later, made no mention of debarment. The only reasonable inference is that debarment followed automatically upon the finding of guilt. This is precisely the course against which paragraph 3.4.2 of the Guidance Notice cautions and is irreconcilable with the duty imposed by section 14(2)(a). No notification under

section 14(3)(c) was given. The applicant was not informed of the decision, her rights under Chapter 15 of the FSR Act, or the formal requirements for reconsideration. She consequently remained excluded from the industry for more than two years without knowing that she had been debarred.

25. The debarment falls to be set aside on these grounds alone. As the procedural defects are dispositive, it is unnecessary to determine the merits, and the Tribunal does not do so. Three matters should nevertheless be recorded.

26. The first charge could not sustain a finding that the applicant lacked honesty and integrity. It concerned an alleged failure to carry out an instruction. The respondent's documents describe the instruction as an exercise given to the applicant. Verification of the member record depended upon the co-operation of a third party over which she had no control. The scheme confirmed in writing that afternoon that the volume of enquiries generated by the respondent exceeded it queue capacity, and the applicant contemporaneously reported that 170 members remained unverified for that reason. Whatever failure this may disclose, it was not dishonest. At most, it concerned performance, while competence was not identified as a ground on the notification form.

27. The second charge is of a different order. Depending on the facts, the unauthorised transmission of medical scheme members' personal information to a private email account may support a conclusion that a person no longer meets the honesty and integrity requirement. Whether the applicant's explanation—that she required the material to prepare for a disciplinary process whose scope had not been explained to her—should be accepted depends on the nature and extent of the information and whether it exceeded what she could reasonably have required for that purpose. Twenty-four attachments totalling approximately 32 MB and spanning three employers over three years required careful assessment against that standard. No such assessment appears in the record. There is no ruling, reasoned decision or separate finding on either charges. The only identifiable decision-maker is the key individual, who also authored the correspondence underlying the first charge, acted as charging officer and signed the termination letter.

28. There is a further, logically anterior difficulty. The power conferred by section 14(1) may be exercised only in respect of a representative of the provider or a key individual of such representative. Section 14(1)(b) requires the reasons for debarment to have occurred and become known to the provider while the person was a representative. These are jurisdictional facts. Although the record establishes the applicant’s position and duties, it does not establish that she was a representative as defined in section 1(1). On the description of her duties, the exclusion for clerical, technical, administrative or similar services rendered in a subsidiary or subordinate capacity may apply. Her description as a representative on the notification form is an assertion, not proof. Had the matter been defended, the respondent would have been required to establish those jurisdictional facts.

F. REASONS NOT TO REMIT

29. A procedurally defective decision is ordinarily set aside and remitted so that a lawful process may be followed. Remittal is inappropriate here. The respondent does not seek it, consents to the removal of the debarment and expressly declines to defend the merits. Nor was any debarment process commenced in accordance with section 14(3). The disciplinary proceedings were not combined with a debarment process, and no notice of intention to debar was given. The purported decision of 12 April 2024, taken without any preceding debarment process, cannot itself constitute commencement of the process that the Act requires to precede the decision. Even assuming that the applicant was a representative, any such status ended, at the latest, when her employment terminated on 12 April 2024. The six-month period prescribed by section 14(5) expired 12 October 2024. The respondent’s own letter acknowledges the requirement and records that more than 24 months have passed. Remittal would therefore serve no lawful purpose. The debarment is accordingly set aside without remittal.

G. ORDER

30. The following order is made:

30.1 The application for reconsideration succeeds.

30.2 The decision of the respondent, taken on 12 April 2024, to debar the applicant in terms of section 14(1) of the Financial Advisory and Intermediary Services Act 37 of 2002 is set aside.

SIGNED ON BEHALF OF THE TRIBUNAL ON THIS 19TH DAY OF AUGUST 2026.

ADV SM MARITZ
For self and on behalf of **LTC HARMS (CHAIR)**