

# RF Talks



Q1 2024

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# Foreword



**Astrid Ludin**  
*Deputy  
Commissioner*

Welcome to the latest edition of RF Talks. We are proud to share another comprehensive issue with you and hope that you enjoy the contents thereof. As always, our goal is to keep you informed about the latest trends, insights and regulatory updates in the retirement funds industry. To achieve this goal, we have curated a diverse range of articles that address both the opportunities and challenges within our sector.

In this quarter's edition, we shine a spotlight on critical case law matters, including whether an employer is entitled to a final interdict to compel a retirement fund to withhold an employee's pension benefit pending the outcome of a civil action instituted against the employee. This analysis provides a nuanced understanding of the legal frameworks impacting our industry.

We also cover significant international and local developments. A highlight is the upcoming 5th APSA Annual General Meeting and Conference in Livingstone, Zambia. This event will focus on the strides Africa has made in ensuring a dignified retirement for its workforce and address pivotal issues confronting the continent's pension systems.

Furthermore, we provide an update on the newly revamped Trustee Training Toolkit and delve into the Two-Component System and the rule amendments received.

As we progress through 2024, we remain excited about the future and our ongoing journey with you. Our team is dedicated to serving you better and we welcome your feedback and suggestions. Your input is invaluable in helping us continually improve and deliver relevant and valuable content. Please feel free to reach out to us with your comments or questions by e-mail to [Sanchia.Petrie@fsca.co.za](mailto:Sanchia.Petrie@fsca.co.za)

# Municipal Employees Pension Fund v Ngakwana Sephuma and Another- The Financial Services Tribunal

*By Duduzile Nhlapo*

*Fund Governance and Trustee Conduct Department*

In this case the Municipal Employees Pension Fund (the fund) approached the Financial Services Tribunal (FST) for a reconsideration of a determination by the Office of the Pension Funds Adjudicator (OPFA). Ms NE Sephuma (the complainant) became entitled to receive a spousal pension accruing to her as a result of the death of her husband who was a member of the fund. The spousal pension commenced in March 1999. The fund suspended the payment of the spousal pension to the complainant in 2016 after it allegedly addressed a letter to her via the Post Office urging her to visit the offices of the fund to update her personal details, which she failed to do.

The fund claimed to have taken considerable effort to trace the complainant without success. In June 2022, a complaint was filed by the complainant in terms of section 30A of the Pension Funds Act (PFA). In September 2022, the fund reinstated the payment of the spousal pension following the complainant's submission of the required documents in August 2022.

The complaint was then referred to the OPFA which issued a determination in favour of the complainant, ordering the Fund to pay the complainant's arrear monthly annuity from June 2019 to August 2022 by 31 July 2023. The fund ignored this order, despite the Fund not having applied for the suspension of the order in its reconsideration application to the FST.

In its reconsideration application, the fund relied on two grounds, namely, (a) that the suspension of payment meant that the complainant's right to the spousal pension terminated during 2016 and was only reinstated in September 2022; and (b) that the complaint was time barred as the suspension of the spousal pension took place more than six years before the complaint was filed.

Rules 41 and 42 of the fund rules regulate the payment of spousal pension. Rule 41 provides for the benefits payable upon the death of a member, and it states that in the event a member passes before reaching retirement date, the benefit will be paid in terms of section 37C of the PFA to the surviving spouse in the form of a monthly pension, which will cease when the surviving spouse dies.

Rule 42 provides for the payment and increases of monthly annuities and it states that the committee may require a beneficiary to submit proof, as it may deem necessary, that the beneficiary concerned is still entitled to payment of an annuity, failure to submit such proof may lead to the fund withholding payment until such proof is submitted to the fund.

The fund contested the order by the OPFA that it was liable to pay the complainant's monthly spousal pension in arrears, arguing that the Fund could not be unfairly penalised for the complainant's failure to provide the requested information. The fund argued further that it had no reserves from which to pay to the arrear annuities and that paying such arrear annuities would be tantamount to retrospective liability.

As to the fund's first argument, the FST held that the PFA did not permit the forfeiture of pension benefits and that the rules could not be read as to allow that which the PFA did not permit. The FST held further that the term "withhold" must be interpreted restrictively and could not mean "forfeit". As to the fund's second argument, the FST came to the conclusion that the OPFA was correct in ruling that it could still investigate the complaint for the six months starting from June 2019.

In conclusion, the FST found that the reconsideration application had no merit and dismissed the application.

# Umgungundlovu District Municipality v Natal Joint Municipal Pension Fund and Another (KZN Division, Pietermaritzburg)

*By Duduzile Nhlapo*

*Fund Governance and Trustee Conduct Department*

The issue before court in this case was whether the employer was entitled to a final interdict to compel the fund to withhold Mr Bhengu's (the employee) pension benefit pending the outcome of a civil action instituted against him.

The employee was permanently employed on 2 May 2007 at Umgungundlovu District Municipality (the employer) as a manager in the Human Resources department. During 2021, the internal audit division of the employer conducted an audit to determine the cause of the exorbitant travel allowances which had been paid by the employer. The internal audit division found that there were overpayments made in respect of travel allowances of certain employees including the employee, which overpayments emanated from the travel allowance policy that was in place at that time.

In November 2021, a disciplinary hearing was held by the employer in which Mr Bhengu was charged with 10 counts of, inter alia, dishonesty, gross misconduct and gross dereliction of duty. It emerged from the disciplinary hearing that the employee had received an overpayment of his travel allowance in the amount of R416 213.82 and had unduly benefitted at the employer's expense. The chairperson of the disciplinary hearing found the employee guilty of 8 out of the 10 counts of misconduct. The chairperson recommended the dismissal of the employee, which dismissal happened in March 2022.

In May 2023, the employer became aware that, following his dismissal, Mr Bhengu's fund membership had terminated in the Natal Joint Municipal Pension Fund ("the fund") and had he submitted a withdrawal claim of his pension benefit in April 2022. Upon discovery of the aforementioned, the employer addressed a "letter to the fund invoking the provisions of section 37D of the Pension Funds Act 24 of 1956 (the Act) requesting the fund to withhold payment of the employee's withdrawal benefit pending the finalisation of its civil claim for damages.

The employer launched an application to court where it sought a final interdict to compel the fund to withhold the employee's pension benefit pending its civil claim against him.

In its application, the employer had to satisfy the elements of a final interdict, all of which it successfully proved barring one. As to the employer not having an alternative remedy other than the final interdict, the court found that the employer did have an alternative remedy in that once the fund had made a final decision on whether it would withhold the employee's pension benefit or not, the employer could refer the matter to the Pension Funds Adjudicator for a determination.

In the result, the court could not grant a final interdict but granted an order in the interim, in terms of which the fund was interdicted from paying the amount of R416 213.82 or any lessor amount held by it as a pension benefit of the employee. The order was issued pending the fund making a final decision on the employer's written request to withhold the employee's withdrawal benefit.



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# Chronicling Africa's Pension Journey: The 5th APSA Annual General Meeting and Conference

*By Mohomotsi Monyela*

*Fund Governance and Trustee Conduct Department*

The Africa Pension Supervisors Association (APSA), with support from the Financial Sector Deepening (FSD) Africa and in collaboration with the Pension and Insurance Authority Zambia, is set to host the 5th APSA Annual General Meeting and Conference in Livingstone, Zambia from 24 to 26 July 2024. This much-anticipated event will provide a vital platform for discussing the strides Africa has made in ensuring a dignified retirement for its workforce. The theme for this year's conference is 'Chronicling Africa's Pension Journey Towards a Dignified Retirement'.

This year's conference promises to tackle critical issues facing the continent's pension systems, bringing together a diverse audience of stakeholders from both the public and private sectors. Attendees will include senior government officials, regulators, policymakers, thought leaders, senior economists and domain experts from Africa and beyond. This assembly aims to foster robust engagement and the exchange of ideas and experiences, crucial for advancing the pension landscape across the continent.

Over the course of three days, the conference will feature nine sessions, each delving into crucial topics in the pension sector. Here's a preview of what participants can expect:

## **Session 2: Understanding the Current Landscape of Pension Systems in Africa**

This session will examine the reform paths taken by various countries, highlighting the challenges and opportunities for optimal pension systems design. The ultimate goal is to identify lessons and key policy areas that can solve significant challenges.

### **Session 3: The Transformative Impact of Technology on Pension Supervision**

Participants will explore how cutting-edge technologies enhance pension supervision efficiency, risk management, and regulatory compliance. Case studies and best practices will provide insights into leveraging technology for long-term sustainability in an increasingly digitised landscape.

### **Session 4: The Transformative Impact of Technology on Pension Funds Administration and Investment**

This session will showcase how mobile applications and digital platforms can streamline pension administration, improve member engagement and facilitate investment management. The role of technology in enhancing efficiency and transparency, especially during crises like COVID-19, will be the key focus.

### **Session 5: Environmental, Social, and Governance (“ESG”) Considerations in Pension Investing**

This session will address the impact of climate change and environmental factors on pension investments. Strategies for integrating ESG considerations into pension fund management to enhance long-term resilience will be discussed.

### **Session 6: Micro Pensions as a Panacea to Coverage Challenges for the Forgotten Middle (Informal Sector)**

Strategies for promoting financial inclusion and extending pension coverage to underserved populations, including informal sector workers, women, and rural communities, will be explored. This session will build on discussions from the 2023 conference, focusing on successful and sustainable pension designs for the informal sector.

## **Session 7: Unlocking Opportunities in Alternative Investments for Pension Schemes**

As pension schemes seek to diversify portfolios and enhance returns, this session will delve into alternative investments, including private equity, hedge funds, real estate, and infrastructure investments. Insights into navigating associated risks and regulatory concerns will be provided.

## **Session 8: Mitigating Longevity Risk in the Face of Rapid Demographic Change**

Focusing on post-retirement well-being, this session will discuss payout phase products like annuities and income drawdowns, and the adequacy of benefits in terms of income replacement rates. The importance of post-retirement medical covers and standardised old-age care will also be highlighted.

Among the distinguished speakers are: Ms Namakau Ntini, CEO of Pension and Insurance Authority, Zambia; Mr Peter Banda, Board Chairperson of Pensions and Insurance Authority, Zambia; Mr Mark Napier, Chief Executive of FSD Africa; Mr Stefan Nalletamby, Director of Financial Sector Development Department at the African Development Bank; Hon. Dr Situmbeko Musokotwane, Minister of Finance & National Planning; Hon. Brenda Tambatamba, Minister Labour & Social Security; and Ms Zareena Camroodien, Head of Fund Governance and Trustee Conduct department at the Financial Sector Conduct Authority (FSCA).

This conference promises to be an exciting and insightful event, fostering significant advancements in Africa's pension systems and paving the way for a dignified retirement for all workers on the continent.

For more information on the conference and/or registration for the event, kindly contact [Zareena.Camroodien@fsca.co.za](mailto:Zareena.Camroodien@fsca.co.za)

# Non-Payment of Contributions by Participating Employers in Retirement Funds

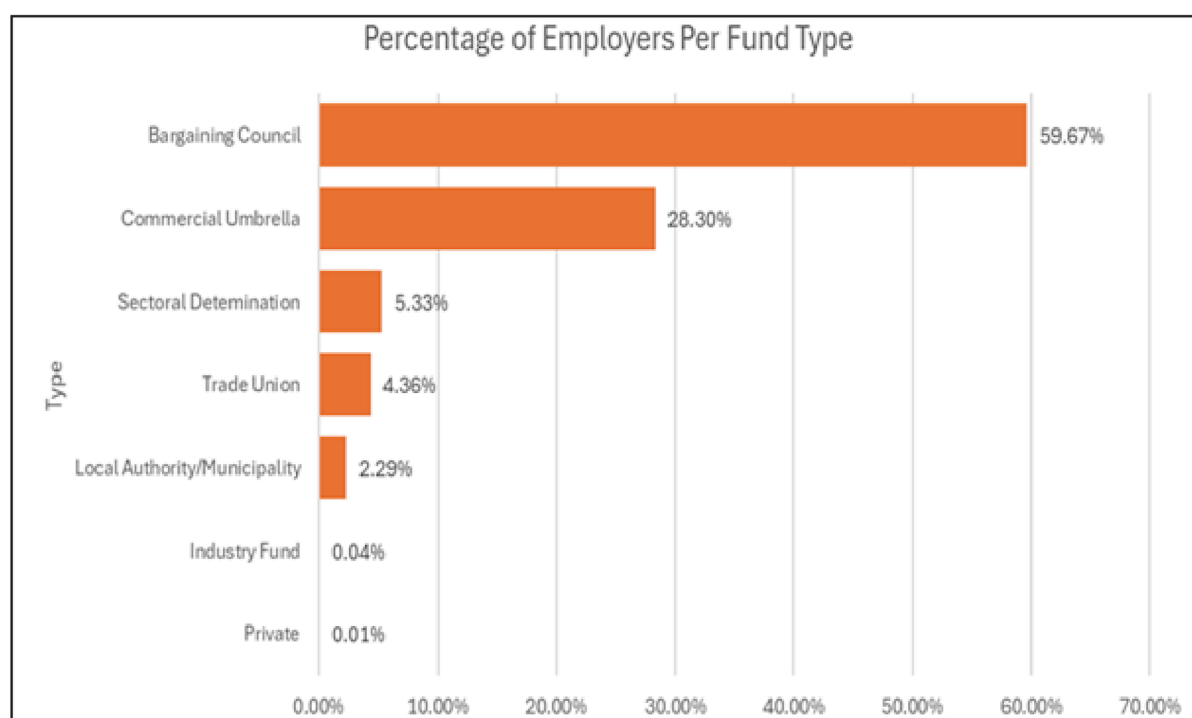
*By Keabetswe Tsuene*

*Retirement Fund Conduct Supervision Department*

On 26 March 2024, the Financial Sector Conduct Authority (FSCA) published on its website the second edition of employers who contravened section 13A of the Pension Funds Act, 1956 (PFA) through FSCA Communication 10 of 2024 (RF).

As at 31 July 2023, there was an increase in the number of retirement funds that responded to the FSCA's request to provide a list of defaulting employers in the specified format. In the initial publication, there were 23 retirement funds that reported with this number growing to 42 in the subsequent publication.

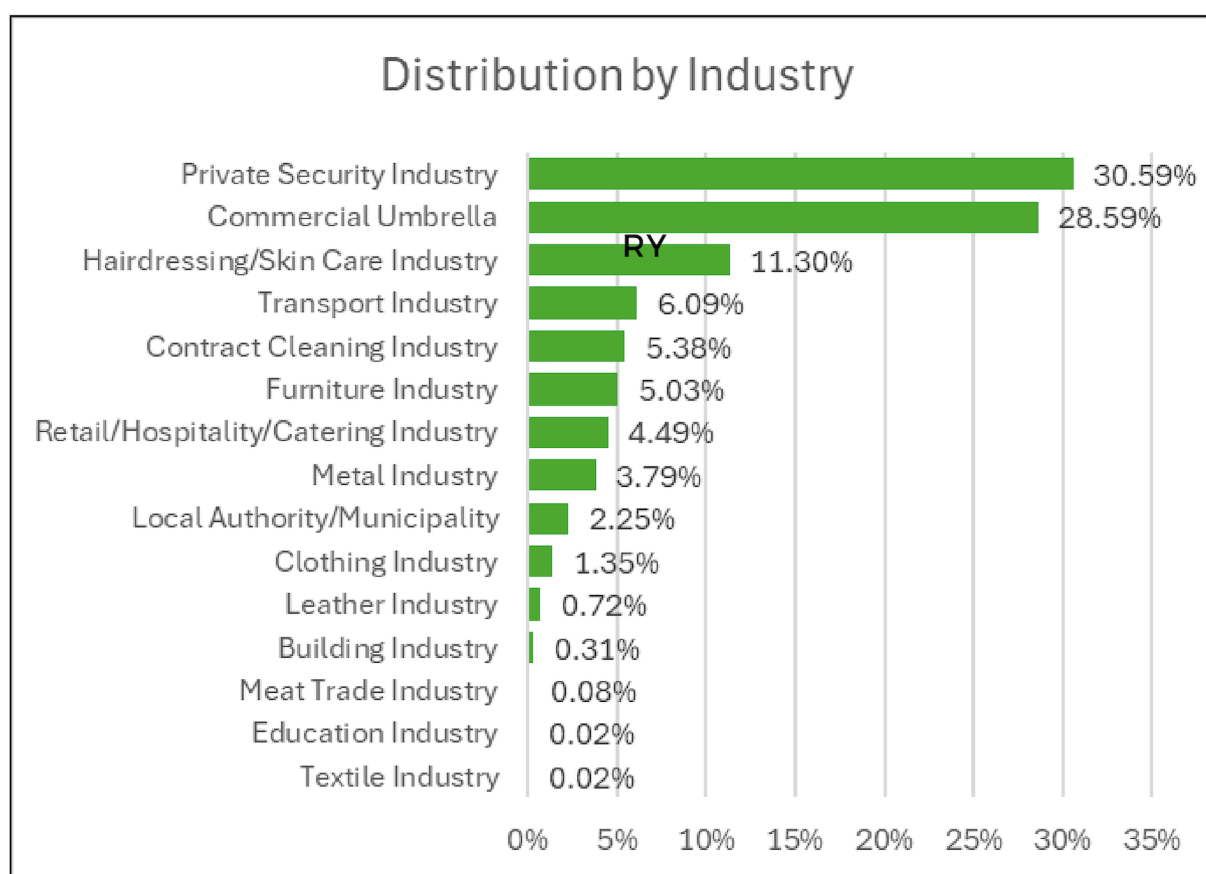
Fig 1: Percentage of employers per fund type



Funds in the Bargaining Council sector make up most of the defaulting participating employers.

In respect of the employers who contravened the PFA, the FSCA received the names of 5 430 employers for the initial publication and 7 133 employers for the subsequent publication. However, the two publications named only 3 262 and 4 178 employers, respectively, and the FSCA took a decision to only publish the names of those employers who were in arrears above a certain number of months. Alarming, 8 854 employers have been reported to the FSCA to have contravened section 13A of the PFA.

Fig 2: Distribution by industry



The employers within the Private Security Industry make up most of the employers who have contravened section 13A of the PFA.

Subsequent to the initial publication, the FSCA received attorneys' letters on behalf of the published employers, mostly in the private security sector, threatening legal action to which the FSCA responded decisively. The FSCA found that many of the employers in question had indeed contravened the PFA, however, the number of months in respect of which such employers were in default was the issue. This was rectified in the subsequent publication.

There were 10 employers who were published erroneously as per the erratum issued in the publication on 26 March 2024.

The FSCA is pleased that there have been employers who have approached their respective retirement funds subsequent to the initial publication. In respect of the employers who were reported to have made payment and the names that were published, the difference can be attributed to the following:

- 537 employers with arrears for 1 month;
- 150 employers with arrears for 2 to 4 months;
- 9 employers with arrears for 5 to 19 months; and
- 7 employers whose period of outstanding contributions was not provided.

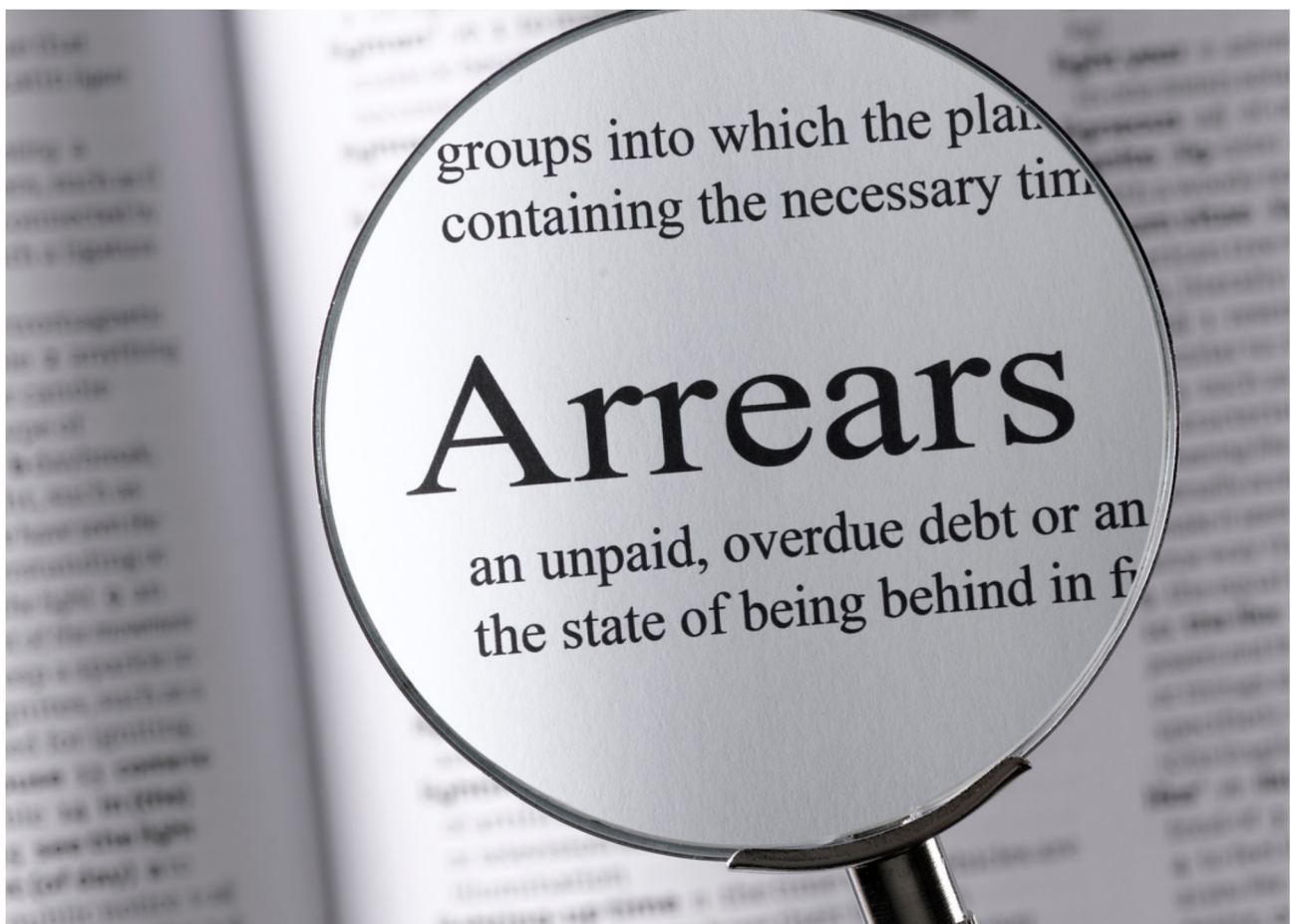
Fig 3: Actions taken by employers



Whilst the financial impact of the above stated defaults may be seen as a drop in the ocean, the FSCA is seeing more interaction between non-compliant employers and retirement funds. The FSCA is also engaging more with non-compliant employers.

This exercise by the FSCA is proving to be effective, not only in relation to member awareness but it has also caught the attention of society at large. The FSCA has shared its analysis with organisations such as the South African Local Government Association and anticipates more frequent engagements with various stakeholders as the s work intensifies.

In conclusion, the FSCA has noted with concern that there are some retirement funds who only report at the request of the FSCA and not as and when the contraventions occur as prescribed in Conduct Standard 1 of 2022 (RF). The FSCA will be issuing penalties to the identified retirement funds.



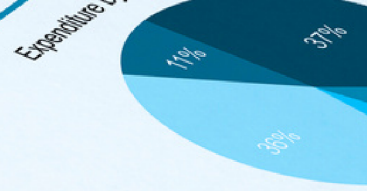
# Retirement plan

Details	Additional Income	
	Month	Amount
Mid Year Bonus	June	2,000
Year End Bonus	December	3,000
Total Additional Income	January	5,000

Expenditure	Planned Expenses	
	Month	Amount
November vacation	November	450
Home for the holidays	December	500
Gifts for family	December	880
Family vacation	July	
	January	
	January	
	January	
	January	
Total Planned Expenses		2,230

Budget by Month	
May	June
13,220	16,525
7,000	7,000
0	2,000

162,796
185,908
211,034
238,331
267,968
300,123
7,961



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# Survey Outcomes on Service Level Commitment of Retirement Funds Supervision Division

*By Lebogang Tlhapane*

*Office of the Deputy Commissioner*

The Retirement Funds Supervision Division (RFSD) at the Financial Sector Conduct Authority (FSCA) published its revised Service Level Commitment (SLC) which came into effect on 1 October 2023. The revised SLC contains 26 processes that the RFSD is responsible for and confirms the Division's commitment to continuously improving its service delivery and its aim to improve 40% of the published SLC by 2%.

On 13 March 2024, the RFSD conducted a Survey on the revised SLC with the aim to improve services offered to regulated entities. The Survey was issued to 1 080 stakeholders, which included retirement funds and fund administrators, to evaluate stakeholder satisfaction and identify areas of improvement.

Despite a limited response from 36 stakeholders, the Survey provided valuable insights.

## Key Findings

### **Responsiveness and communication**

Stakeholders appreciated the RFSD's responsiveness and effective communication, particularly on the Two-Component System and rule amendments. Comments included:

- The effective communication and explanation on the Two-Component System.
- Turnaround times for the registration of rules amendments, including special rules, and huge improvement in the section 14 transfer approach and approvals.

## Quality of service

Stakeholders recognised the RFSD's commitment to high service standards and continuous improvement. Feedback included:

- Appointment of section 26 boards - this team is providing really good service.
- Liquidation exemption approvals.
- Approvals for appointments are always attended to timeously.

## Support and problem resolution

The support provided by RFSD, especially in problem resolution, received positive feedback. Specific instances included:

- Turnaround times on registration of special rules and revised special rules.
- The Head of Retirement Fund Prudential Supervision and the Head of Retirement Fund Conduct Supervision are always prepared to engage administrators to assist.

## Areas for Improvement

While the survey results were positive, stakeholders also provided constructive feedback on areas of improvement:

### Enhanced technological integration

Some stakeholders suggested that the FSCA could benefit from integrating technologies to streamline processes and enhance service delivery. Stakeholders suggested that the FSCA offer an easy access portal like the WhatsApp Business function used by banks that allows real time updates as and when the user engages with the FSCA.

### Proactive communication

A few respondents indicated a desire for more proactive communication regarding service level updates and the highlighting of potential issues that could delay the

approval process. Respondents are of the view that this option would address stakeholders' needs more effectively, especially when the standard timeframe in the SLC will not be met.

### Feedback mechanism

Although communication was generally rated highly, some stakeholders recommended a more structured feedback mechanism to ensure accuracy and avoid duplications.

### Next steps

The results of the Survey provided a clear indication that the current service level commitments are well-received by stakeholders. The levels of satisfaction in key areas such as responsiveness, communication, quality of service and reliability demonstrate the division's dedication to excellence. However, the feedback also provides valuable insights into how the division can continue to evolve and enhance service delivery to its stakeholders.

The following service offerings were chosen by our stakeholders to be considered for SLC improvement for the year 2024/25. Going forward, the RFSD plans to reduce the turnaround times outlined in Table 1 below.

Fig 4: SLC improvement



Table 1: Current turnaround times

<b>SLC Processes</b>	<b>Current turnaround times</b>
Amendments to rules	180 days
Cancellation of registration	270 days
Exemptions	90 days
Approval of appointment – Auditors, Valuers, Principal Officers, Responsible Person (S13B)	60 days
Amalgamations and transfers (Section 14)	60 days
Acceptance of submission of valuation reports (Section 16)	365 days
Registration of rules	180 days
General enquiries and correspondence	30 days
Section 26 Board appointments	60 days
Section 28 Liquidations	60 days

Moving forward, the RFSD is committed to maintaining a high level of service delivery, address the areas for improvement and strengthen relationships with stakeholders.

# The Two-Component System: Rule Amendments

*By Nkateko Khoza*

*Retirement Fund Reviews and Authorisations Department*

The first edition of RF Talks, which was published in March 2024, outlined the background which led to the introduction of the Two-Component System and gave a detailed explanation as to what it entails and the effective date thereof, being 1 September 2024. The Financial Sector Conduct Authority (FSCA) initially issued FSCA Communication 3 of 2024 (RF) which sets out the requirements for the submission of rule amendments to give effect to the Two-Component System. Engagements with the industry were still ongoing at the time and necessary changes that were agreed upon had to be incorporated in the Revenue Laws Amendment Bill, 2023 and the Pension Funds Amendment Bill, 2024. As a result thereof, the FSCA subsequently published FSCA Communication 16 of 2024 (RF) (Communication 16).

Communication 16 sets out updated requirements for the submission of rule amendments to give effect to the Two-Component System.

Since these requirements were fully explained in the previous edition of RF Talks, the intention of this article is to give an update on the submissions received from funds since then.

Paragraph 11 of the updated Communication 16 called upon funds or administrators to commence with the submission of rule amendments with effect from 2 May until 15 July 2024. The intention was to enable the FSCA to have sufficient time to consider these applications. The FSCA indicated therein that the amendments lodged were to be limited to changes that were in respect of the Two-Component System.

Essentially, as explained in the previous edition, the proposed amendments were to provide for the following:

- Retirement Pot;
- Savings Pot; and
- Vested Pot.

Further, the amendments had to provide for the various permissible deductions, liquidation of the fund and the cessation of a member's status of tax resident.

The FSCA was amenable to funds/administrators' submitting "drafts" for consideration and to grant "in principle approval" prior to formal submission via its online portal. Funds or Administrators were called upon to submit one of each fund type to the FSCA for consideration. For example, pension fund, provident fund, retirement annuity fund, pension preservation and provident preservation fund. The invitation was appreciated by the industry and the FSCA duly received approximately 39 drafts. These were all considered, concerns were raised as appropriate and subsequently addressed by the applicants. Most said draft applications were therefore granted the requisite "in principle approval" on condition that "upon submission, the amendment will be scrutinised, and the Authority may (if necessary) raise further queries."

To date, there are approximately 68 formal submissions that have been received by the FSCA. These have been prioritised and are being attended to on an urgent basis.



# FSCA Launches Final Phase of the Trustee Training Toolkit

*By Sanchia Petrie*

*Fund Governance and Trustee Conduct Department*

On 28 March 2024, the Financial Sector Conduct Authority (FSCA) marked a significant milestone with the launch of the final phase of the revamped Trustee Training Toolkit (TTK) on its e-learning platform, bringing the TTK Development Project to completion. The launch introduced the second and final set of 11 modules, adding up to a comprehensive total of 22 modules designed to enhance trustees' knowledge and skills. These additional modules, together with the first tranche of 11 modules launched on 26 September 2023, aim to better equip trustees of retirement funds to fulfill their fiduciary duties more effectively and efficiently.

Astrid Ludin, Deputy Commissioner of the FSCA, underscored the crucial role that retirement funds play in our economy. With over R5 trillion in assets under management, South Africa's retirement fund industry ranks among the world's largest, significantly impacting both local and other emerging markets. She emphasised the necessity for well-managed retirement funds and knowledgeable trustees to ensure the industry's success. It is the duty of the FSCA to support trustees in their quest to develop the necessary knowledge and skills to fulfil their roles and responsibilities. In closing, Ms Ludin reaffirmed the FSCA's commitment to providing such support to trustees through the development and recent enhancement of the TTK.

The FSCA issued FSCA Communication 11 of 2024 (RF) on 28 March 2024 to inform stakeholders of the extended deadline for the completion of the first 11 modules of the TTK by way of FSCA RF Notice 5 of 2024, and the determined dates by which board members must complete the second tranche of 11 modules of the TTK by way of FSCA RF Notice 6 of 2024. The first set of 11 modules (modules 1-11) are to be completed by 30 September 2024 and the second set of 11 modules (modules 12-22) are also to be completed on the same date.

It has been three months since the launch of the final 11 modules of the revamped TTK and the preliminary statistics for the period September 2023 – May 2024 are showing mixed results.

For the first set of 11 modules, 5 018 trustees registered on the TTK e-learning platform, with 3 819 trustees completing modules 1-11, resulting in a completion rate of 76%. For the second set of 11 modules, 1 165 trustees registered and 418 trustees completed modules 12-22, leading to a completion rate of 36%.

However, according to the FSCA's database, there are 21 185 trustees in South Africa. This indicates that only 24% of trustees registered for the first set of modules, and a mere 6% for the second set.

The FSCA plans to issue reminders to all trustees who have not yet completed all 22 modules of the revised TTK, urging compliance before the 30 September 2024 deadline. Non-compliance will result in regulatory action being taken against trustees, including the potential removal of such trustees after affording them due process in terms of section 26(2) and (4) of the Pension Funds Act, 1956.

The FSCA remains dedicated to supporting trustees in developing the necessary expertise to uphold their fiduciary duties, ensuring the robust management and continued success of South Africa's retirement fund industry.



Fig 5: Registered Trustees for Module 1 - 11

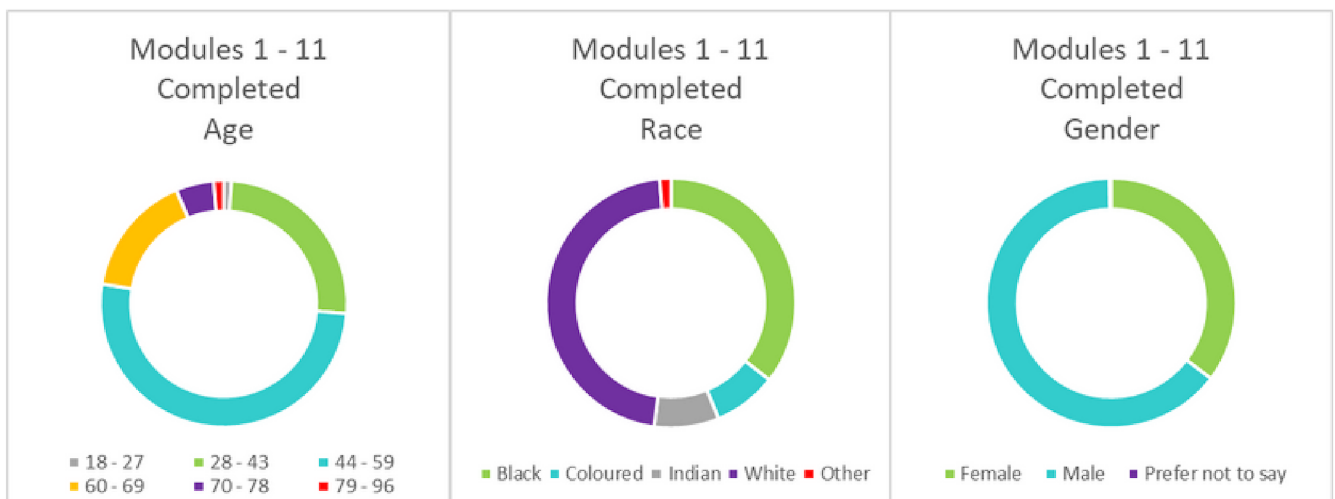
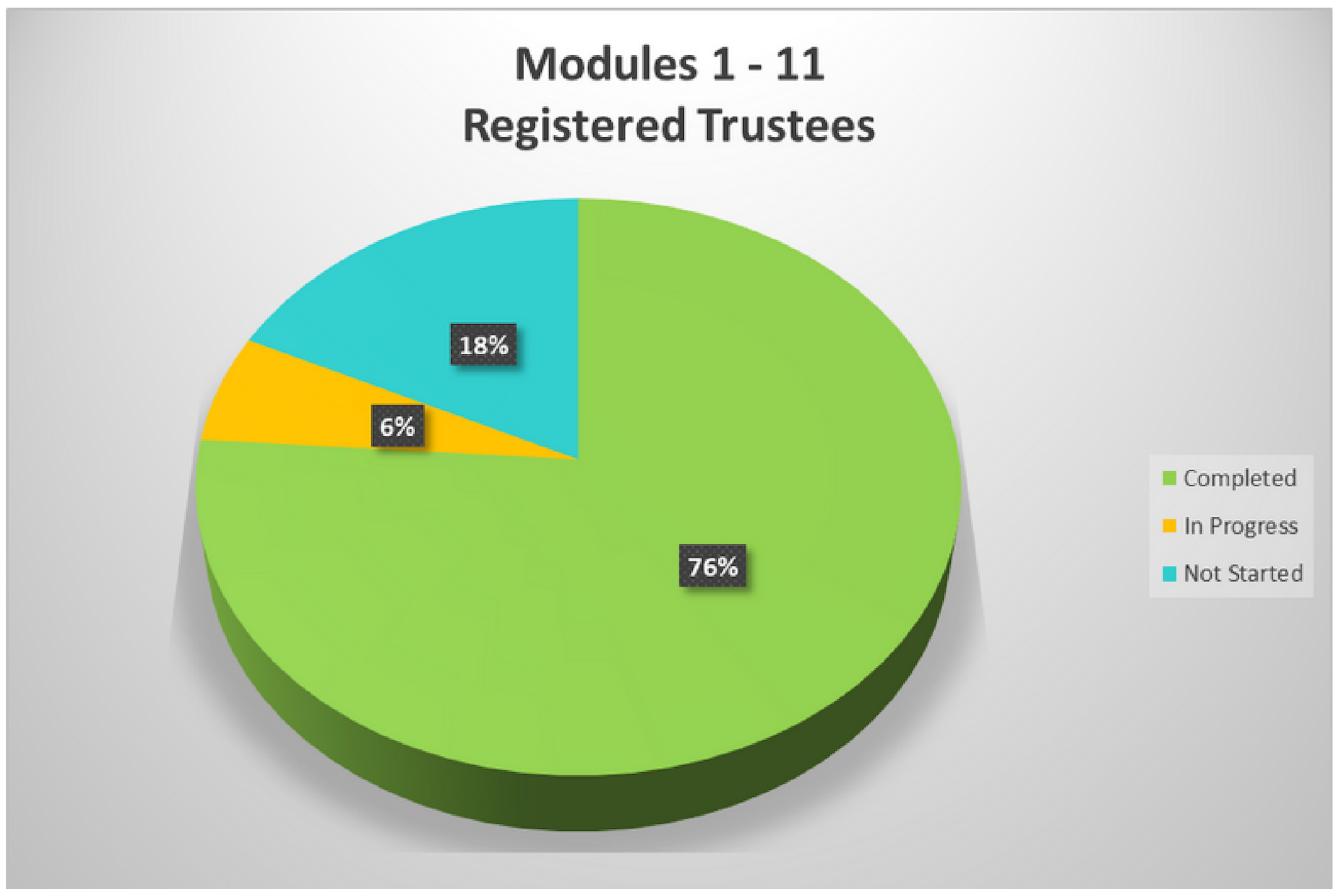
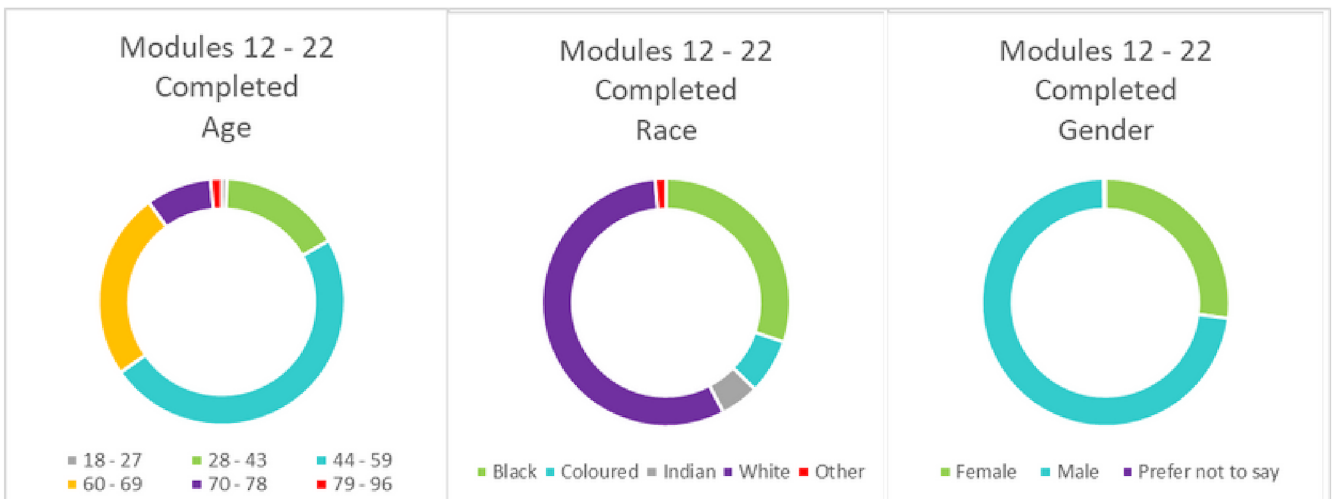
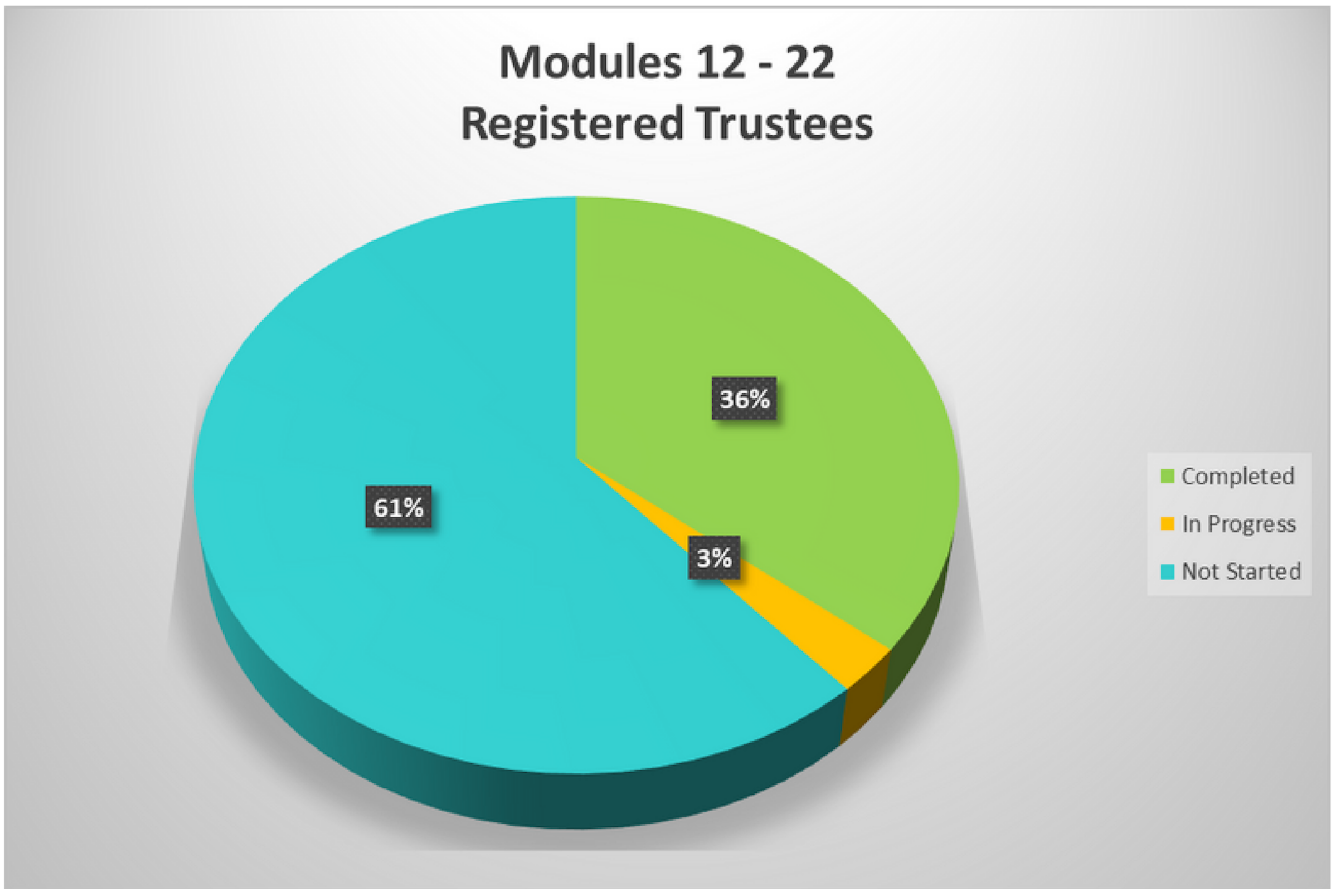


Fig 6: Registered Trustees for Module 12 - 22





# RF Talks

## Contact

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