



THE FINANCIAL SERVICES TRIBUNAL

CASE NO. A37/2026

In a matter between:

ASSOCIATES UMBRELLA PROVIDENT FUND

Applicant

and

FINANCIAL SECTOR CONDUCT AUTHORITY

Respondent

TRIBUNAL PANEL: Judge LTC Harms (Chairperson) and Adv W Ndinisa (Member)

Date of hearing: No hearing, matter decided on papers

Date of Decision: 26 October 2026

Summary: Administrative penalty – sec 67(a) and (b) – appropriate administrative penalty - contravention of sec 15(1), read sec 37(2) of the Pension Funds Act 24 of 1956 (“the PFA”) – general rule – a higher body is not entitled to interfere with the exercise by a lower body of its discretion unless it proves specific conduct(s)

DECISION

INTRODUCTION

1. The applicant is Associates Umbrella Provident Fund (“the Fund”), a duly registered pension fund.
2. The respondent is Financial Sector Conduct Authority (“the Authority”) established in terms of section 56 of the Financial Sector Regulation Act, 9 of 2017 (“the FSR Act”) and its functions are, amongst other things, to regulate and to supervise, in accordance with financial sector laws, the conduct of financial institutions.
3. The Fund lodged this application in terms of section 230 of the FSR Act, seeking reconsideration of the decision of the Authority to impose the administrative penalty on 31 May 2026, for failure to timeously submit the 2024 financial statements in terms of section 15(1) of the Pension Funds Act 24 of 1956 (“the PFA”).
4. The parties agreed that this matter be decided on the documents filed, and on written submissions made, on record, and for that reason waived their rights to oral hearing.

RELEVANT FACTUAL BACKGROUND

5. The facts relevant to this matter are not in dispute. It is common cause that the Fund failed to submit its 2024 financial statements as at 31 July 2024, to the Authority on or before 31 January 2025. It was late and out of time with 108 days.

Notice of the Authority

6. On or about 27 November 2025 the Authority issued a notification of intention to impose an administrative penalty for late and non-submission of the 2024 financial statements (“the Notice”).
7. The Authority proposed to impose a penalty in the amount of R 1000 (one thousand rand) per day for overdue returns. According to the Notice, the penalty amount as at 15 October 2025 is R108,000,00, calculated up to 15 October 2025.

8. The Notice refers, amongst other things, to section 15(1) of the PFA and Board Notice 77 of 2014 which prescribe that every registered fund shall, within six months from the expiration of every financial year, furnish to the Authority such statements in regard to its revenue, expenditure and financial position as may be described, duly audited and reported on by the auditor of the fund.
9. Further, the Notice states that the penalty amount may not exceed R4 000.00 per day for every day during which the failure to submit the financial statements continues.
10. The Authority stated that apart from the Fund's failure to comply with a statutory obligation, the failure to timeously submit such financial statements restricts the Authority's ability to fulfil its statutory obligation to regularly monitor the financial conditions of funds and to take such action as may be appropriate should the fund be in an unsound position.
11. The applicant was invited to make written representation to the Authority by 31 January 2026 and provide reasons, substantiated by documentary evidence, as to why the penalty should be reduced or not imposed.

Representation of the Fund

12. On 30 January 2026 the Fund submitted its written representation in response to the Notice. The Fund's representation to the Authority is summarised as follows:
 - 12.1. During the year 2024 all administrators were gearing up for the soon to be implemented 2 POT system as it were to be implemented on 1 September 2024;
 - 12.2. There were many changes still to be imposed just before Revenue Amendment Act of 2023 was signed in June 2024 and systems had to be tested and implemented to ensure readiness at the end of August 2024;

- 12.3. Many meetings were held with experts including auditors to ensure that systems were updated and tested before 1 September 2024;
- 12.4. There were additional SARS updates just before 31 August 2024 and even after 1 September 2024 that needed to be implemented over and above the initial development;
- 12.5. The 2 POT claims were overwhelming and all hand were needed to process and pay the savings portions of the members; and
- 12.6. Due to the holiday periods during December and January, both the Administrator and audit staff were on leave and that placed some pressure on the Fund to complete the audit in time.

The Decision

- 13. After having considered the Fund's representation, the Authority decided to impose the penalty in the amount of R108 000.00. It stated that it was not persuaded to reconsidered or vary its stated intention to impose an administrative penalty in terms of section 37(4) of the PFA.
- 14. The Authority determined that the Fund has poor planning/governance issues. Further, the Authority decided to apply proportionality and referred to: Net Asset Value (NAV) versus size of penalty.
- 15. The applicant approached the Tribunal challenging the aspect of administrative penalty for the late submission of the 2024 financial statements.

The Applicant's version

- 16. The Fund submitted that hindsight is perfect science and conceded that it should have applied for an extension for the submission of the 2024 financial statements.

17. Further, the Fund submitted that it should have split into two (2) teams with one only focusing on the completion of the audited financial statements and the other to ensure that the systems and the internal controls were updated with the latest 2 POT legislation and the relevant testing.
18. Furthermore, the Fund submitted that they (the Fund and its administrator) had no idea that South African Revenue Service (SARS) would still send updates after 1 September 2024 and that needed to be coded in, tested and audited very quickly so that the system could process the 2 POT claim.
19. The Fund acknowledges that it has learned for its previous mistakes and notes that it did apply for an extension for the 2025 financial statements as the implementation of, amongst other things, Joint Standards brought a lot of changes in the accounting system.

ANALYSIS AND REASONS FOR THE DECISION

20. The legislative framework of the administrative penalty has been referred to and its sections, including relevant provisions has been incorporated by both parties in their respective submissions. Therefore, they will not be fully quoted. The Authority imposed an administrative penalty in terms of section 37(4) of the PFA. The prescribed maximum penalty is R4 000.00 per day for every day during which the failure to submit the returns continues. In this matter the penalty imposed amounted to R108 000.00, as a consequence of the Fund's non-compliance for a period of 108 days.
21. In determining an appropriate administrative penalty, for particular conduct, the Authority must have regard to include (i) deterrence; (ii) degree of co-operation; and (iii) any submissions made by the person concerned, including mitigating factors rereferred to in those submissions.¹ Further, the provisions of section 167(2)(b) of the FSR Act provide that the Authority may have regard to include the

¹ Section 167(2)(a) of the FSR Act.

listed factors stated in this provision, in the process of determining an appropriate penalty.

22. The Fund contends that the real issue before the Tribunal is whether the imposition of the full R108 000.00 penalty, without any reduction, was an appropriate and proportionate exercise of the penalty discretion when the circumstances of this particular contravention are considered.
23. The essence of the Fund's case is captured in its submissions which state that the stronger and proper formulation of its case is that a historically compliant Fund encountered an exceptional convergence of regulatory, systems, audit and operational circumstances; the contravention was neither deliberate nor reckless; no benefit was obtained; the Fund cooperated; and that corrective measures were taken. Further, it states that the Authority's reasons do not demonstrate that those material mitigating considerations affected the quantum of the penalty. The Fund requests the Tribunal to attach substantial weight to the history of the Fund when determining whether the full proposed penalty was appropriate.
24. The contentions of the Authority are, amongst other things, that (i) contravention is common cause; (ii) the representation of the Fund discloses operational, administrative and governance failures rather than exceptional circumstances; and (iii) the penalty imposed was substantially below the statutory maximum. For these reasons the Authority argues the Fund has failed to establish any basis upon which the Tribunal should interfere with the Authority's exercise of discretion.
25. We note that the Fund raised number of factors in its representation to the Authority and that was done in mitigation of the administrative penalty. In *Met Collective Investments (RF)(Pty)(Ltd) v Financial Sector Conduct Authority*² this Tribunal had considered the application of section 67 where there were several mitigating factors that were raised and the following paragraphs are instructive:

² Case No A23/2019 at paras [65] to [67]

[65] Deterrence in sec 167 is not a self-standing determinant but “must” be “considered” in conjunction with the degree to which the person has cooperated with the regulator in relation to the contravention; and any submissions by, or on behalf of, the person relevant to the matter, including mitigating factors referred to in those submissions. Since MetCI, in its submissions to the Commissioner, raised all the issues mentioned in sec 167(2)(b) has the effect that those issues now must be considered and that it is no longer simply a matter of discretion to consider them.

[66] That illustrates the fact that mechanical checklists in determining any sanction, administrative or criminal, are problematic. Ticking the box of each element does not mean that the correct weight was attached to the element or that result is necessarily “appropriate”, which is the ultimate measure. Why, for instance, the Legislature thought it wise to place “the nature, duration, seriousness and extent of the contravention” under “may” and not “must” is anyone’s guess since it is the logical starting point of the consideration of any penalty under any system. Eventually, the “appropriate” penalty, having regard to the deterrence factor, can only be assessed after consideration of all the relevant facts, whether aggravating or extenuating.

*[67] In reconsidering the penalty, it must be borne in mind, as we have held before *Mwale v The Prudential Authority* that:*

“The ordinary rule is that a higher body is not entitled to interfere with the exercise by a lower body of its discretion unless it: failed to bring an unbiased judgment to bear on the issue; did not act for substantial reasons; exercised its discretion capriciously; or exercised its discretion upon a wrong principle. There is no reason why we should not apply the same approach during an application for reconsideration.” (own emphasis)

26. We agree with the submission of the Fund that deterrence is a legitimate and expressly prescribed consideration, but deterrence does not displace proportionality or the statutory requirement that the penalty be appropriate. The Fund laments that the Authority did not meaningfully engage its representation

regarding reduction or waiver of penalty. However, ticking the box of each element does not mean that the correct weight was attached to the element or that the result is “*appropriate*” which is the ultimate measure. We reiterate what this Tribunal earlier stated, being that eventually, “*appropriate*” penalty, having regard to the deterrence factor, can only be assessed after consideration of all the relevant facts, whether aggravating or extenuating.

27. The Fund could have avoided the contravention of the section 15(1), and the consequences of section 37(2) the PFA by seeking an extension of the period for the filing the 2024 financial statements in terms of section 279 of the FSR Act. It is not clear why the Fund did not seize that opportunity to do so. This is not impressive.
28. We note that it is a lesson learned for the Fund. It submitted and demonstrated how it should have planned and managed the implementation of the 2 POT system to avoid the unplanned delays and the contravention. This gives credence to the Authority’s determination of poor planning/governance issues.
29. Further, we note that it is not the intention of the Fund to trivialise the importance of compliance with the statutory provisions of the PFA. The Notice of the Authority underscored the seriousness of non-compliance when it stated that failure to submit timeously the financial statements restricts its ability to fulfil its statutory obligation to regularly monitor the financial conditions of funds and to take such action as may be appropriate. This cannot be understated.
30. The Fund takes issue with the Authority’s Proportionality applied: Net Asset Value (NVA) versus size of the penalty. It contends that an NAV comparison, standing alone, does not answer the statutory question whether R108 000.00 was an appropriate penalty for this particular conduct. The penalty of R108 000.00 is not seen in isolation. The Authority submitted that the imposed administrative penalty was substantially below the statutory maximum of R 4 000,00 per day for every day during which the failure to submit continues. The penalty of R1000.00 per day for continuing violation, does account for the particular conduct of the Fund in this matter.

31. We reiterate the ordinary rule, as previously stated by this Tribunal, being that a higher body is not entitled to interfere with the exercise by a lower body of its discretion unless it: failed to bring an unbiased judgment to bear on the issue; did not act for substantial reasons; exercised its discretion capriciously; or exercised its discretion upon a wrong principle. In the absence of any evidence demonstrating any of these factors and that the decision was wrong, we are not persuaded to set aside and/or reduce the imposed administrative penalty.
32. Therefore, we find no basis to interfere with the decision of the Authority.

ORDER: The application for reconsideration is dismissed.

Signed on 26 October 2026

___Sgd Adv W Ndinisa_____

Adv W Ndinisa