IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

1. REPORTABLE: YES
2. OF INTEREST TO OTHER JUDGES: YES
3. REVISED

8/5/2026 [redacted]
DATE SIGNATURE

CASE NO: 2024-0283792

In the matter between:

PETERSON: KEANAN WENDALL	Applicant
and	
OLD MUTUAL INSURE LIMITED	First Respondent
NICHOLAS DEMPSEY N.O.	Second Respondent
FINANCIAL SECTOR CONDUCT AUTHORITY	Third Respondent
THE REGISTRAR OF THE FINANCIAL SERVICES PROVIDERS	Fourth Respondent

Summary:

[1] *Practice and procedure – incorrect enrolment of non-insolvency matter in Insolvency Court – Inherent power of Court to overrule*

Directive: Rules The Dedicated Insolvency Motion Court in the interests of justice to hear incorrectly enrolled matter of public interest

[2] *Administrative law – administrative act by registrar of financial services providers determining requirements for reappointment of a debarred person as a financial services representative by notice in Gazette under authority conferred by section 13(1)(b) of the Financial Advisory and Intermediary Services Act, No. 37 of 2002 not an administrative act or decision subject to review under Promotion of Administrative Justice Act, No. 3 of 2000 (PAJA)*

[3] *Administrative law – oversight authority conferred by Financial Advisory and Intermediary Services Act, No. 37 of 2002 on financial services providers to confer status of financial services representatives depends on employer/employee or principal/agent relationship – oversight authority cannot be extended to reappointment of debarred financial services representatives without contractual link to financial services providers – Gazetted Determination by registrar of financial services providers extending oversight authority for reappointment of debarred financial services representatives to financial services providers declared ultra vires enabling enactment and invalid*

[4] *Practice and procedure – competent to grant order not specifically sought under further and/or alternative relief where issues supporting relief common cause in competing affidavits squarely before Court*

JUDGMENT

KATZEW AJ:

[1] This matter, which has no semblance of an insolvency or related component to it, came before me in the recently constituted Insolvency Court on 5th December 2025. No issue was made in argument of the error in classification for the Insolvency Roll, and I reserved judgment on the merits.

[2] It needs to be emphasized that due to the haste of my acting appointment the previous day to assist with the backlog in the Court, I did not have an opportunity of reading the Court file prior to the allocation of the matter to me for summary hearing. The matter was not allocated to me with a reservation for suitability for hearing in the Insolvency Court, and I was none the wiser of its mis-enrolment when I called upon the Applicant's legal representative, Mrs. Sibiya, to give me an overview of the matter.

[3] Once I had been addressed by Mrs. Sibiya, it was clear to me that the Applicant is contending for a possible unreasonable subordinate legislative provision blocking his efforts to have his name removed from the register of debarred financial advisors maintained by the Third Respondent, to which the Applicant had been committed in 2017 by his employer at the time, the First Respondent, following a guilty verdict of misconduct by the Applicant at a disciplinary hearing that had been convened by the First Respondent.

[4] I also realized from Mrs. Sibiya's submissions that the matter was totally devoid of any insolvency or related component. This is manifest from the Notice Of Motion, wherein the Applicant as a debarred financial representative seeks the following relief:

> *"1. The Financial Services Conduct Authority (Third Respondent) and/or The Registrar Of The Financial Services Providers (Fourth Respondent) uplifts the Applicant's debarment.*

2. *The name of the Applicant be removed from the debarred representative register.*

3. *The Applicant is reappointed as a representative, to render financial service to clients or on behalf of financial service providers.*

4. *Costs only against the respondents who may oppose the application.*

5. *Further and/or alternative relief."*

[5] I was disinclined at the close of Mrs. Sibiya's opening address to raise the issue of mis-enrolment in the Insolvency Court with her. The cost incurred by the Applicant in bringing a matter of possible public interest to the attention of the Court weighed with me, and in the interests of justice I decided to hear Mr. Sangoni, counsel for the parties who oppose the application, namely the Third Respondent and the Fourth Respondent, who confined his submissions to the architecture of the relevant legislation and the Applicant's non-compliance therewith, but significantly relied on heads of argument prepared for the Third Respondent and the Fourth Respondent by his predecessor in the matter, Mr. L.M. Maite of the Pretoria Bar, which concluded with the following remarks:

"45. *The opposition submitted by the FSCA* ["the Third Respondent"] *aims to safeguard the operational integrity* of *the national legislation, which exists primarily to protect the unsuspecting public.*

46. *The relief sought in the application has extensive implications that can potentially negate the very purpose of the legislation.*

47. *It was incumbent upon FSCA* ["the Third Respondent"] *to bring forth the necessary facts before this Court for a just determination to be made.*

48. *It is for this reason that FSCA* ["the Third Respondent"] *does not seek any cost order against the applicant.*

49. *It is accordingly submitted that should applicant be successful with the order it* (sic) *seeks; costs should not be awarded as against the FSCA for reasons already enunciated herein. ..."*

[6] Having heard Mr. Sangoni and Mrs. Sibiya in reply, I decided to refrain from raising the issue of mis-enrolment in the Insolvency Court with them. I harboured the intent of determining the circumstances whereunder the Court has inherent jurisdiction in the interests of justice to overrule the rules providing for the peremptory confinement of insolvency and related matters to the Insolvency Court.

[7] The source of the creation of the Insolvency Court is the **Notice by the Office Of The Deputy Judge-President, Gauteng Division, Johannesburg, dated 10th March 2025 regarding the Introduction Of A Pilot Dedicated Insolvency Court In The Johannesburg High Court** (*"the Notice"*) together with its accompanying **Directive: Rules For The Dedicated Insolvency Motion Court (IMC) And The Dedicated Insolvency Trial Court (ITC) In The Johannesburg High Court**, recorded as having been *"Dictated by the Deputy Judge President"* Roland Sutherland (*"the Directive: Rules For The Dedicated Insolvency Motion Court"*).

[8] The Insolvency Court is a product of *"The policy objective ... to give recognition to the commercial imperative of expedition in this* [Insolvency] *field of legal practice by establishing procedures which can afford quick turnaround lead times within the broad framework of the existing litigation*

model" (see paragraph 3 of the Notice). The **Directive: Rules For The Dedicated Insolvency Motion Court** are meant to give effect to this policy objective.

[9] The Deputy Judge President derived authority to make the **Directive: Rules For The Dedicated Insolvency Motion Court** from section 173 of the Constitution of the Republic of South Africa Act, No.108 of 1996.

[10] The consequence of incorrect enrolment in the Insolvency Court is alluded to in the caution in paragraph 4 of the **Directive: Rules For The Dedicated Insolvency Motion Court** that *"An error in classification by the attorney risks the case not finding its way to the correct roll and being struck from the incorrect roll."*

[11] The **Rules Regulating The Conduct Of The Proceedings Of The Provincial And Local Divisions Of The High Court Of South Africa** made by the Rules Board for Courts of Law under section 6 of the Rules Board for Courts of Law Act 1985 (Act 107 of 1985) with the approval of the Minister of Justice and Constitutional Development, can be relaxed on good cause shown in terms of Uniform Rule of Court 27(3).

[12] Notwithstanding the peremptory tenor of the **Directive: Rules The Dedicated Insolvency Motion Court**, it is the Court's view that by parity of reasoning they also cannot deprive the superior courts to which they apply of their inherent jurisdiction to grant relief when insistence upon exact compliance therewith would result in substantial injustice to a party or parties.

[13] It will become apparent from the following analysis of the facts and governing primary legislation and subordinate provisions that the Applicant is confronted with an insurmountable hurdle in his attempt to comply with the requirements contained in the subordinate provisions for having his name removed from the register of debarred financial advisors

held by the Third Respondent. It is clear too that the obstruction is the result of inherent unreasonableness and impossibility of enforcement of the subordinate provisions for removal of a debarred financial advisor from the register which are attributable to the provisions themselves and not in any way to the conduct of the Applicant.

[14] A Court concluding that subordinate provisions are *ultra vires* is limited to determining whether the provisions are *intra* or *ultra vires* enabling legislation, which *inter alia* includes whether the provision accurately reflects the intention of the enabling enactment.

[15] It is in this spirit that I exercise the Court's inherent jurisdiction to overlook the mis-enrolment of the matter and to afford it a hearing.

[16] The facts in this matter are detailed but not complex.

[17] On 1st November 2016 the Applicant was employed as a sales consultant within the vehicle insurance department of the First Respondent, which is a duly registered financial services provider (*"fsp"*) in terms of the Financial Advisory and Intermediary Services Act, Act No.37 of 2002 (*"the Act"*).

[18] On 1st July 2017 the Applicant completed the first level regulation examination which enabled him to render services under the Act.

[19] On 26th October 2017 the First Respondent convened a disciplinary hearing under the chairmanship of Mr. J. Dworkin for misconduct relating to dereliction of duty/dishonesty by the Applicant.

[20] On 30th October 2017 the First Respondent notified the Applicant in writing that he had been found guilty at the disciplinary hearing of misconduct constituted by gross dereliction of duty/dishonesty involving failure or neglect of duty that has or could have serious consequences for the First Respondent, its employees or other persons, in that he had deviated from

the standard of conduct between 31st July and 13th October 2017 on several client policies by failing to follow correct underwriting guidelines and in so doing disregarded business rules/practices with an intention of making a sale.

[21] The material facts/elements relied on by the First Respondent in its finding in the disciplinary hearing were that in assessing the risk and accurately determining the premium, the Applicant had captured information incorrectly which resulted in premium prejudice, the Applicant had misrepresented and failed to disclose the basic excess applicable to the various clients, the Applicant had in many cases provided clients with incorrect premium amounts, and the Applicant had also in many cases failed to discuss the initiation fee with clients which resulted in the subsequent cancellation of the policies.

[22] Based on the findings of the disciplinary hearing, the First Respondent terminated the Applicant's employment.

[23] On 16th November 2017, which was after the Applicant's employment with the First Respondent had been terminated, the Second Respondent as the designated Key Individual of the First Respondent delivered a **NOTICE OF DEBARMENT** to the Applicant notifying him in terms of section 14(1) of the Act that as from 31st October 2017 until the date on which the debarment is lifted he is debarred and that the Financial Services Board will be informed of his debarment and that his name will be removed from the First Respondent's (FSP 12) register of representatives/key individuals and that he is prohibited from providing any financial services to existing or new clients under the First Respondent's FSP 12 license in terms of the Act or under the license of any other financial services provider.

[24] The **NOTICE OF DEBARMENT** is recorded as having been imposed and signed by the Second Respondent on 16th November 2017 as the

management representative and designated Key Individual of the First Respondent.

[25] Significantly, the correctness and/or fairness of the debarment of the Applicant is not challenged by the Applicant. Neither for that matter does the Applicant directly challenge the fairness and/or reasonableness of the provisions for reappointment of a debarred representative, which may have been, and which remains, an option open to him. However, the effect of this judgment may render his failure to have done so moot.

[26] It needs to be said that the absence of any challenge by the Applicant to the correctness and/or fairness of his debarment or to the fairness and/or reasonableness of the provisions for reappointment of a debarred representative effectively neutralizes Mr. Sangoni's submissions in argument and Mr. Maite's submission in his heads that the appropriate remedy for the Applicant is to have resort to review proceedings in terms of section 6(2) of the Promotion of Administrative Justice Act No. 3 of 2000 (*"PAJA"*).

[27] Mr. Sangoni in argument and Mr. Maite in his heads confined their submissions in this regard to a contention that the only remedy available to the Applicant against his debarment is to apply for a review and setting aside of the First Respondent's finding of misconduct by the Applicant at the disciplinary hearing convened by the First Respondent on 26th October 2017 and its consequential **NOTICE OF DEBARMENT** of the Applicant.

[28] Without a challenge by the Applicant to the correctness and/or fairness of his debarment, these submissions are anomalous and flawed, and moreover unfold to the untenable conclusion that only debarred financial advisors who succeed in having their debarring set aside by the Court on review can apply for reappointment as financial advisors and for the lifting of their debarring.

[29] Quite apart from the untenability of the eclipsing of a right of a debarred representative who accepts the correctness of his/her debarring to apply for reappointment, the enabling legislation itself, namely section 13(1)(b)(ii) of the Act, as read with its subordinate provisions for reappointment of debarred representatives (neither of which require a review and setting aside of the debarment for reappointment as a financial representative) is a complete riposte to their submissions.

[30] Section 13(1)(b)(ii) of the Act confers the authority for the subordinate provisions as follows:

> *"13. (1) A person may not*
>
> *(a) ...*
>
> *(b) act as a representative of an authorised financial services provider, unless such person –*
>
> *(i) ...*
>
> *(ii) if debarred as contemplated in section 14, complies with the requirements determined by the registrar, after consultation with the Advisory Committee, by notice in the Gazette, for the reappointment of a debarred person as a representative."*

[31] The notice in the Gazette, 82 of 2003 under the auspices of the Financial Services Board in terms of the Act, states that

> *"I, Jeffrey van Rooyen, Registrar of Financial Services*

Providers, after consultation with the Advisory Committee on Financial Services Providers, hereby under section 13(1)(b)(ii) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), determine the requirements for the reappointment of debarred representatives as set out in the Schedule."

[32] The relevant portions of the Schedule are extracted as follows:

*"**Definitions***

***1**. In this Schedule "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), any word or expression to which a meaning has been assigned in the Act shall have the meaning and, unless the context otherwise indicates -*

"applicant" means a debarred representative who applies to an authorised financial services provider for reappointment;

"appointing provider" means the authorised financial services provider who reappoints a debarred representative;

"date of reappointment" in relation to an applicant, means the date on which the reappointment of a debarred representative is to take effect;

"debarment date" means the date on which the name of a debarred representative has been removed from the register referred to in section 13(3) of the Act;

"debarred representative" means a representative of an

authorised financial services provider who has under section 14(1) of the Act been prohibited by the relevant provider to render any new financial services and whose name has been removed from the register referred to in section 13(3) of the Act;

"debarring provider" in relation to an applicant, means the authorised financial services provider who debarred the applicant;

"reappointment", in respect of a debarred representative, means the reappointment of such person as a representative of any authorised financial services provider (whether being the provider which debarred such person or not), in order to act in accordance with the provisions of section 13(1)(b)(i) of the Act.

Requirements for reappointment of debarred representatives

2. *The requirements for the reappointment of a debarred representative shall be as follows, namely, that the applicant must be a person who, on the date of reappointment, complies with the following, which compliance must, where necessary, be proved by the submission to the appointing provider by the applicant and, where appropriate, the debarring provider or any other person, of relevant original substantiating documentation or certified copies thereof, including affidavits (if any):*

(a) *At least 12 (twelve) months since the debarment date must have elapsed …*

(b) *all unconcluded business of the applicant as former representative, referred to in the proviso to section 14(1) of the Act, has been properly concluded;*

(c) all –

(i) complaints or legal proceedings (if any) submitted by clients to the applicant or the debarring provider, or the Ombud or any court of law; or

(ii) other administrative or legal procedures or proceedings in terms of the Act or any other law, arising out of any acts or omissions in which the applicant was directly or indirectly involved prior to the debarment date, have been properly and lawfully resolved or concluded, as the case may be, and that the applicant has fully complied with any decision, determination or court order in connection therewith, given or issued in respect of the applicant;

(d) all fit and proper requirements as contemplated in section 8(1)(a) and (b), read with section 13(2), of the Act are complied with.

Short title and commencement

3. *This determination is called the Determination of Requirements for Reappointment of Debarred Representatives, 2003, and comes into operation on the date determined by the Minister under section 7(1) of the Act."*

[33] Section 7(1) of the Act states as follows:

"7. (1) With effect from a date determined by the Minister by notice in the Gazette, a person may not act or offer to act as a financial services provider unless such person has been issued with a licence under section 8."

[34] It is common cause that the Determination of Requirements for Reappointment of Debarred Representatives, 2003 *("the Determination") was* in operation at the time the Applicant was debarred.

[35] The Applicant's contention in his Founding Affidavit that it is impossible to implement the requirements for reappointment because no financial services provider will employ him as a debarred representative is not denied by any of the respondents. This results in the contention devolving into an admitted fact in the application. The exchange on the point between the adversaries in the application is as follows:

> *"I approach this honourable court as am prejudiced* (sic) *by the debarment as I am unable to obtain any employment in the financial sector. I have attended numerous job interviews, and some have been successful however, when the verification process is undertaken and the debarment is confirmed, the job gets revoked. "* **Per the Applicant in paragraph 25 of the Founding Affidavit.**

> *"Some of the aspects mentioned in these paragraphs such as alleged rehabilitation of the applicant, are factors a reappointing FSP must consider in order to reappoint the applicant as a representative. The remainder of the contents of these paragraphs are noted."* **Per the Divisional Executive of the Conduct of Business Supervision Division of the Financial Sector Conduct Authority in paragraph 72 of the Affidavit On Behalf Of The Third And Fourth Respondents under the heading *"Ad paragraph 23 to 27"*.**

[36] Section 13 of the Act as read with the Determination schematically clothes registered financial services providers with the authority to confer status of financial services representatives on persons in their service as employee or agent. Fundamental to this authority is the employer/employee or principal/agent relationship between the provider and the representative. This is borne out by the following extract from the judgment of Ponnan, JA in **Financial Services Board v Percy George Edward Barthram And Discovery Life Ltd 2018 (1) SA 139 (SCA) at paragraph [15]** (my underlining):

> *"[15] Sections 13(2)(a) and (b), as also s 14(1) and (2), are couched in peremptory terms. Failing compliance with those provisions the FSP* [Financial Services Provider] *itself is liable to sanctions. FAIS* [Financial Services Advisory and Intermediary Services Act 37 of 2002] *requires an authorised FSP not just to be authorised and licenced as such by the Registrar, but also to exercise oversight in respect of the initial and continuing fitness <u>of its chosen representatives</u>. The FSP having itself gone through a vetting process at the hands of the Registrar is eminently suited <u>to subject its representatives</u> to a similar initial vetting and thereafter to exercise oversight in respect of them. The Registrar would only get to learn of a <u>representative's employment or appointment</u> <u>by an FSP</u> in consequence of the updating of the FSB's* [Financial Services Board's] *central register by such FSP pursuant to s13(5). A debarment of a representative in terms of s 14(1) is complete when the <u>FSP has withdrawn the representative's authority to act on its behalf</u> and has removed such person's name from its own register in terms of s 13(3). Moreover, the Registrar only gets to learn of a representative's debarment, after the event, on being informed of such by the FSP in terms of s 14(3). Upon removal of the representative's name from the FSP's register, the FSB's central register is correspondingly updated."*

[37] The key words in the above extract are *"fitness of its chosen representatives"*, which confirm that the authority conferred on a financial services provider to exercise oversight over the appointment of a financial services representative rests on the former's extant employer/employee or principal/agent relationship with the latter, which does not exist in the case of a debarred representative seeking reappointment.

[38] To this extent at least the provisions in the Determination conferring continued oversight authority on the financial services provider in the reappointment of a debarred financial services representative are impossible to fulfil and must accordingly be regarded as falling outside the intention of the Legislature in the enabling legislation in section 13(1)(b)(ii) of the Act.

[39] Due to the central role attributed to the financial services provider in the reappointment process envisaged in the Determination, it is impossible to sever any portion of the Determination without eclipsing its efficacy, which renders the entire Determination *ultra vires* the power conferred by the enabling legislation.

[40] It is however clear that by enacting section 13(1)(b) (ii) of the Act, the Legislature intended conferring exclusive authority on an extra-curial body to deal with applications for reappointment of debarred representatives, which ousts the jurisdiction of the Court to play any role in the reappointment process.

[41] Mrs. Sibiya's submission to the contrary, namely that the Court is vested with a discretion to grant the relief sought in the Notice Of Motion (set out in paragraph [4] above) similar to the Court's discretion to re-enrol struck attorneys, ignores the basis for the latter discretion expressly conferred on the Court under section19(1) of the Attorneys Act No. 53 of 1979 (repealed by the Legal Practice Act No. 28 of 2014 on 1st November 2018) to readmit a practitioner, which included practitioners who had been struck

off the roll or suspended from practice by the Court under the Attorneys Act.

[42] No such authority, express or implied, is conferred on the Court by the Act *in casu*.

[43] Logically under the Act, in line with the intention of the Legislature only a panel appointed by the Fourth Respondent in consultation with the Advisory Committee on Financial Services Providers can conceivably fill the role of arbiter on the fitness of a debarred representative for reappointment.

[44] I have already pointed out that the panel earmarked in the Determination by the Fourth Respondent, namely the appointing financial services provider, is ill-suited to the foreshadowed role, which renders the Determination unworkable.

[45] Although not suggested as an issue for review under PAJA by Mr. Sangoni in argument or by Mr. Maite in his heads, the Court in coming to its decision needs to consider whether the creation of the Determination constituted an administrative action and decision as envisaged by section 1 of PAJA subject to review thereunder by the Court.

[46] The Court's view in this regard is that notwithstanding that the creation of the Determination constituted an administrative act by the Fourth Respondent under the Act, it was not an administrative action and decision as envisaged by section 1 of PAJA qualifying for review under PAJA by the Court. This is self-evident from the definitions of administrative action and decision in section 1 of PAJA.

[47] Had the Applicant's approach in this matter been that the Determination is unfair and an unreasonable obstacle to his application for reappointment as a debarred financial services representative, his formal

remedy would have been to seek the striking down of the Determination as *ultra vires* the enabling legislation for that reason. The fact that he has not done so leaves the issue outside of the Court's scope of consideration in form only – in content the issue is squarely before the Court.

[48] Turning to the Court's power to pronounce upon the validity of the Determination without this relief being specifically sought in the Notice Of Motion, the registrar as contemplated in section 13(1)(b)(ii) of the Act is before the Court as the Fourth Respondent, has opposed the application and is represented by counsel.

[49] Moreover, the impossibility of implementation of the Determination is common cause between the competing parties in the application, including the Fourth Respondent.

[50] The Court accordingly finds that it is competent to *mero motu* make the following finding and order under the prayer in the Notice Of Motion for *"Further and/or alternative relief"* :The provisions labelled by the Fourth Respondent **Determination of Requirements for Reappointment of Debarred Representatives, 2003** under the authority conferred on him in section 13(1)(b)(ii) of the Act, are *ultra vires* and invalid.

[51] As far as costs are concerned, the Court is guided by both Mr. Sangoni's submission in argument and Mr. Maite's submission of public importance of the matter in his heads extracted in paragraph [5] above and agrees with both that none of the competing parties should be mulcted in costs. The following is accordingly ordered:

1. The relief sought in prayers 1, 2, 3 and 4 of the Notice of Motion is dismissed.

2. The Determination of Requirements for Reappointment of Debarred Representatives, 2003 as per the notice in the Gazette,

82 of 2003 under the auspices of the Financial Services Board as represented by the Fourth Respondent is declared *ultra vires* section 13(1)(b)(ii) of the Financial Advisory and Intermediary Services Act, No. 37 of 2002 and invalid.

3. The Order in paragraph 2 above is suspended until 1st December 2026 to allow the competent authority to correct the defect.

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be on 8 May 2026.*

[redacted]

S M KATZEW
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES:

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Date of Hearing: 5th December 2025

Date of Judgment: 8th May 2025