Financial Services Tribunal

CASE NO: A14/2026

In the matter between:

ELECTRICAL CONTRACTING INDUSTRY PENSION FUND First Applicant

ELECTRICAL CONTRACTING INDUSTRY

PROVIDENT FUND Second Applicant

and

FINANCIAL SECTOR CONDUCT AUTHORITY Respondent

TRIBUNAL PANEL: Adv G Goedhart SC (Chair), Adv M Mphaga SC, Adv PR Long

Appearance for Applicants: Adv K Magan (Heads of argument prepared by Adv K Magan and Adv N Sibanyoni)

Appearance for Respondent: Mr S Rossouw, Ms M Bopape

Date of hearing: 8 September 2026

Date of Decision: 18 November 2026

Summary: Pension Funds Act 24 of 1956 – statutory actuarial valuation reports – rejection under section 15(3) read with section 16(9) – whether approval of a surplus apportionment scheme under section 15B(9) in respect of the Pension Fund, or noting of a nil return under section 15B(11) in respect of the Provident Fund, of itself established

the contingency reserve accounts identified in those documents with retrospective effect from the surplus apportionment date. Rejection decisions set aside as being founded on the incorrect legal premise and remitted under section 234(1)(a) of the Financial Sector Regulation Act 9 of 2017. The Authority remains entitled to require a full reconciliation of every approved amount.

DECISION

INTRODUCTION

1. This is an application under section 230(1) of the Financial Sector Regulation Act 9 of 2017 (the FSRA) for the reconsideration of decisions of the Financial Sector Conduct Authority (the Authority) rejecting the applicants' statutory actuarial valuation reports (the SAV reports) for the periods ending 31 December 2011, 31 December 2014 and 31 December 2017. The decisions concerning the second applicant (the Provident Fund) and the first applicant (the Pension Fund) were communicated on 13 January 2026[1] and 15 January 2026[2] respectively.

2. The Funds seek an order setting aside the decisions and remitting the matter to the Authority for reconsideration. The Authority asks that the application be dismissed.

3. The central ground of rejection is common to both decisions. It is that the opening position in the 2011 report did not reproduce the financial position reflected in the surplus apportionment scheme (SAS) documents as at the surplus apportionment date of 31 December 2008. More particularly, the SAV reports did

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1 Record, Vol 1, Part A, p24.
2 Record, Vol 1, Part A, p26.

not reflect the contingency reserve accounts which, on the Authority's approach, came into existence on the surplus apportionment date (SAD). Because the 2014 and 2017 reports build upon the 2011 opening position, they were rejected as well.

4. The Authority's letters of rejection to both Funds record that: "The approval of the surplus apportionment scheme represents the approval of the Reserve Accounts reflected in the surplus apportionment scheme with effect from the surplus apportionment date. These accounts were established upon the approval of the surplus scheme notwithstanding the absence or (*sic*) reference to any such accounts in the rules of the Fund at the time".[3]

5. The contingency reserve accounts reflected for the Pension Fund were the surplus-apportionment cost reserve of R10,624 million, a data-errors reserve of R8,177 million and a processing-errors reserve of R3,066 million.[4]

6. The contingency reserve accounts reflected for the Provident Fund were a surplus-apportionment cost reserve, a data-reserve account, a processing-error account, an Investec liability and unclaimed benefits accounts totalling R13,706 million.[5] The Provident Fund's nil return reflected assets of R53,773 million, liabilities of R40,067 million and the contingency amounts of R13,706 million.

7. The differences between what was submitted as the reserve accounts reflected in the SAS versus what was reflected in the "Opening Balance" in the 31

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3 Record, Vol 1, Part A, p24, para 3 (13 January 2026 letter); p26, para 3 (15 January 2026 letter).
4 Record Vol 1, Part B, p1H-I, para 21. The actuarial surplus reflected was R65,183 million.
5 Record, Vol 1, Part B, p 1I-1J, para 23.

December 2011 report are reflected in the Authority's further reasons.[6] There is no obvious alignment between the contingency reserve accounts reflected in the SAS documents and the balances thereof as submitted for approval and the "Opening Balance" in the 31 December 2011 SAV report.

8. The Funds dispute that the Authority is correct to assert that the approval of the SAS in March 2020 created the contingency reserve accounts retrospectively as at the SAD. The Funds' position is that the contingency reserve accounts reflected in the SAS did not exist and were only introduced when the rule amendments were effected on 25 March 2022 in respect of the Pension Fund and on 27 August 2024 in respect of the Provident Fund. The rule amendments were approved by the Authority and were not retrospectively effective. Thus, approval of the SAS cannot automatically and retrospectively create contingency reserve accounts which were not in existence in the periods December 2011, December 2014 and December 2017.

9. The Funds assert that the Authority's approach would require of them to reconstruct 12 years of Annual Financial Statements and that it would amount to a grossly disproportional and unfair burden on the Funds, and that it would not serve a member-protective purpose. It is so that the annual financial statements report on the financial position of a fund, whereas a triennial statutory valuation report deals with an investigation undertaken by the valuator into the financial condition of the fund.[7] However, the Pension Fund's 2014 SAV report submitted

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6 Record, Vol 1, Part B, p 1K, para 26 for the Pension Fund and p1K-1L, para 28 for the Provident Fund.

7 Respondent's Heads of Argument (HOA), para 13.

in December 2023, reflects that the annual financial statements were taken into account by the valuator in performing the valuation.[8] The annual financial statements and the SAV reports are therefore not completely severable.

10. The matter turns on the distinction between giving effect to the binding financial consequences of the surplus apportionment process and treating later rule amendments as if they had operated since 2008.

BACKGROUND

11. The Funds were established in 1963 as "bargaining council funds" under labour legislation and were only registered under the Pension Funds Act 24 of 1956 (the PFA) on 1 January 2008. The Funds were therefore required to undertake a belated surplus apportionment exercise under section 15B of the PFA, for which 31 December 2008 was adopted as the SAD.

12. The SAS of the Provident Fund was submitted for approval on 1 March 2019 and that of the Pension Fund on 27 June 2019. When the SAS of the Pension Fund was submitted for approval in June 2019, it was accompanied by a statutory actuarial valuation report dated 21 April 2017. It appears that the Pension Fund's "surplus" as at 31 December 2008 which was approved in March 2020 had been distributed to members who were active at the time as well as to dormant members, in June 2012.[9]

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8 Record, Vol 1, Part B, p31, para 12.

9 Record, Vol 1, Part B, p33, para 26. "Surplus" appears in inverted commas in the SAV as of 31 December 2014.

13. The Pension Fund's SAS was approved on 11 March 2020 in respect of the surplus existing at the SAD. The accompanying certificate confirmed compliance with section 15B(9) of the PFA in respect of the apportionment of the actuarial surplus existing at the SAD. The approval letter required, in addition, that any over-budgeted costs of the exercise be included in distributable surplus, within the bounds of practicality, before final payments were made.

14. The Provident Fund's position was different. On 6 March 2020 the Authority noted its nil return under section 15B(11) of the PFA, in respect of the surplus position at the SAD of 31 December 2008. The Authority's letter recorded that the Provident Fund had no actuarial surplus to apportion and that the Authority did not require the submission of a SAS as envisaged by section 15B(1) of the PFA unless the information given in Forms B and B1 was materially incorrect.

15. At the SAD, and throughout the valuation periods in dispute, the Funds' registered rules did not provide for the contingency reserve accounts named in the surplus documents. The Authority accepts the dates of the registration of the rule amendments. Its contention is that the surplus process had already established the accounts, independently of the later rule amendments.

16. The Pension Fund withdrew and replaced its 2011 and 2014 SAV reports on 18 February 2025[10] and 18 December 2023[11] respectively, and submitted its 2017 SAV report on 18 December 2023.[12] All three reports were thus submitted after

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10 Record, Vol 2, Part B, Item 7, p105.
11 Record, Vol 1, Part B, Item 5, p23. Previously submitted on 8 October 2019.
12 Record, Vol 1, Part B, Item 6, p64.

the 2020 SAS approval and after the registration of its rule amendment on 25 March 2022.

17. The Provident Fund withdrew and replaced its 2014 and 2017 SAV reports on 24 January 2024,[13] before the registration of its rule amendment on 27 August 2024. Its 2011 SAV report was withdrawn and replaced on or about 28 February 2025.[14] Only the 2011 SAV report followed the rule amendment registration.

18. On 20 May, 27 May and 15 August 2025 the Authority asked the Funds to explain, among other things, the reserve accounts established under the surplus documents, discrepancies between the approved surplus position and the SAV reports, retrospective charges against dormant members, deductions from member accounts said not to be supported by the rules, missing trustee resolutions and minutes, and the implementation of actuarial recommendations.

19. On 6 October 2025 the Funds' representatives and the valuator met the Authority's actuarial department in an attempt to resolve the outstanding queries on the 2011 SAV report. On 7 November 2025, the valuator, Moruba Consultants and Actuaries addressed a clarification letter to the Authority.[15]

20. The Pension Fund's letter of 11 November 2025 addressed to the Deputy Commissioner records that the Authority's actuarial department indicated at the October 2025 meeting that the queries would be resolved if the Pension Fund

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13 Record, Vol 3, Part B, Item 20, p247(2014 SAV previously submitted on 8 October 2019); Vol 3, Part B, Item 21, p284; Record, Vol 1, Part A, p7, para 27.
14 Record, Vol 1, Part A, p7, para 27.
15 Record, Vol 1, Part A, pp 32-35.

amended its rules again so that the contingency reserve accounts became effective from the SAD, the registered rules being, in the Authority's view, incorrect in giving those accounts effect only from the date of registration. The Pension Fund's response is that the Authority's position would give rise to "unreasonable and improper outcomes" and that the SAV reports for 2020 and 2023 cannot be submitted (pending resolution of the Authority's queries), that the Fund is closed to new members and that the intention is to liquidate the Pension Fund.[16]

THE FUNDS' POSITION

21. The Funds accept the binding effect of the surplus apportionment process. They do not dispute the amounts allocated or set aside, the purposes for which those amounts were identified, or their obligation to account fully for the preservation, movement and application of those amounts. Their case is that the amounts were carried in the accounts that in fact existed until the later rule amendments introduced the new account structure, and that the Authority wrongly equates recognition of the approved amounts with the retrospective existence of accounts subsequently introduced into the rules. The Funds disagree with the Authority's assertion that the Funds' case rests solely on the registration argument. On the Funds' case, registration bears on the existence of the account, not on the protection of the amount. Whether the reports substantiate that account of the amounts' treatment remains a separate inquiry.

16 Record, Vol 1, Part A, pp44-46.

THE AUTHORITY'S POSITION

22. The Authority's case is that the approved SAS determined not only the amounts attributed to stakeholders, but also the reserve structure through which those allocations were to be implemented and maintained; that the distinction the Funds draw between an amount and the account through which it is administered is artificial; and that a valuation report which ignores the approved structure does not reflect the correct financial condition of a fund. It contends further that, because the reports do not reconcile the approved reserve amounts with subsequent balances and movements, there is no indication "whether, how, and to what extent the contingency reserve amounts were utilised for the purposes for which they were approved, nor, indeed, if those amounts may have been utilised for other (unauthorised) purposes".[17] Finally, it submits that because the Funds' 2011 SAV reports were only submitted in 2025, after both the surplus approvals and the rule registrations, the valuator could and should have taken those events into account. It emphasises that the reconciliation belongs in the SAV reports and should not be deferred until after remittal.

23. The Authority's concerns about traceability are legitimate. They are, however, distinct from the question whether approval or noting of the surplus documents itself established the contingency reserve accounts with retrospective effect. We address both the legal premise and the outstanding reconciliation concerns below.

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[17] Respondent's HOA, para 30.

RECONSIDERATION

24. Reconsideration is “an appeal in the fullest sense”, entailing a complete rehearing and fresh determination of the matter (*Niemiec and Others v Constantia Insurance Co Ltd and Others* PA1/2021, [2021] ZAFST 30, 27 October 2021, para 33, citing *Nichol v Registrar of Pension Funds* 2008 (1) SA 383 (SCA) para 22).

25. Section 16 of the PFA requires a fund to cause its financial condition to be investigated and reported on by its valuator. Section 15(3), as it applies in section 16(9), permits the Authority to reject a report which does not correctly reflect that condition, and requires it to furnish reasons. The operation of those provisions in the surplus context is illustrated in *Registrar of Pension Funds v British American Tobacco Pension Fund* [2016] ZASCA 130 (*British American Tobacco*) paras 4 and 20.

STATUTORY INTERPRETATION

26. The question is one of statutory interpretation. Text, context and purpose are considered together from the outset, but the language used remains the point of departure and sets the limits of the meaning that may properly be ascribed to it. (*Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18; *Capitec Bank Holdings Ltd v Coral Lagoon Investments 194 (Pty) Ltd* 2022 (1) SA 100 (SCA) paras 25–26; *Cool Ideas 1186 CC v Hubbard* 2014 (4) SA 474 (CC) para 28).

27. Section 1 of the PFA defines a contingency reserve account as “an account provided for in the rules of the fund, which has been amended in accordance with the requirements of the registrar, or which has not been disallowed by the registrar, and to which shall be credited or debited such amounts as the board shall determine, on the advice of the valuator where the fund is not valuation exempt, in order to provide for a specific category of contingency”. The “rules” are, in turn, the rules of the fund as registered under the Act.

28. The definition begins with the source of the account: it is an account “provided for in the rules”. Only then does it describe what is credited and debited, by whom, and for what purpose. Where this version of the definition applies, identifying an account in a SAS does not, without more, satisfy the requirement that the account be provided for in the rules. It does not determine whether a particular account had already been validly established under the prior law.

29. The definition of actuarial surplus also distinguishes recognition of a contingency from establishment of an account. As the Funds point out, it permits the surplus calculation to take account both of contingency reserve accounts already established and of those which the board, on actuarial advice, deems prudent to establish. Recognition of a proposed provision is therefore not necessarily the act that legally establishes its account.

30. Section 12 of the PFA governs every alteration, rescission or addition to the rules. No amendment is valid unless it has been approved and registered, and once registered it takes effect from the date determined by the fund or, failing such a determination, from the date of registration. Section 13 makes the registered

rules binding on the fund, its members and those claiming under them, subject to the Act. The PFA thus prescribes both the constitutive step for a rule-based change and the mechanism by which an earlier effective date may lawfully be chosen.

31. In *Tek Corporation Provident Fund v Lorentz* 1999 (4) SA 884 (SCA) the Supreme Court of Appeal held that a fund, the powers and duties of its trustees and the rights of its members are governed by the rules of the fund, the relevant legislation and the common law (para 15), and that the trustees' "substantive powers at any given moment are circumscribed by the rules as they are at that moment" (para 28).

32. In *Mostert NO v Old Mutual Life Assurance Co (SA) Ltd (2)* 2001 (4) SA 159 (SCA) para 60 the SCA drew an important distinction: it is one thing to give amended rules retrospective effect after registration, and something entirely different to give them binding effect before registration. The Constitutional Court endorsed that principle in *Mudau v Municipal Employees' Pension Fund* [2023] ZACC 26 paras 57–62, holding that an unregistered amendment cannot bind a fund or its members, and that later registration does not validate its application during the period in which no such registered rule existed.

33. *Mudau* does not lay down an absolute prohibition upon retrospective amendments. Its significance for present purposes is narrower: a later rule amendment and an earlier statutory consequence are not interchangeable. Each requires its own legal foundation.

34. The Funds point out that where Parliament intended the surplus provisions to operate retrospectively, it said so expressly in section 40B. The Funds complain that the Authority treats approval of an apportionment scheme as though it were registration of a rule and it treats retrospective effect of the approved allocation as though it established the historical factual operation of the account.[18]

THE LEGAL EFFECT OF THE SURPLUS APPORTIONMENT PROCESS

35. Section 15B(9) of the PFA provides that an apportionment is of no force or effect until the prescribed documents and certificates have been furnished and the scheme has been approved. In *British American Tobacco* the Supreme Court of Appeal held that the scheme "acquired the force of law" on approval "but it took effect retrospectively" from the SAD (para 27). Once the scheme allocating surplus to members was approved, the member surplus account "had to be debited to reflect this liability, which follows as a matter of law" (para 28), and the fund could not use a notional credit balance to reduce a deficit that had arisen in the interim (paras 24 and 27–28).

36. The Authority is accordingly correct that the Pension Fund cannot disregard the approved surplus position merely because approval post-dated the valuation dates. The amounts, allocations and obligations arising from the approved scheme must be reflected in a report prepared after approval, insofar as they bear upon the financial condition under investigation. The historical ledger is

[18] Applicants' HOA, para 64.

evidence of what occurred; it is not conclusive of the legal treatment required. The Funds accept as much.

37. *British American Tobacco* does not, however, decide that approval of a surplus scheme amends a fund's registered rules, or brings every contingency reserve account mentioned in the scheme's schedules into legal operation from the SAD. Its reasoning concerned the statutory consequences of the allocation and specified use of surplus for beneficiaries.

38. The Funds contend that member and employer surplus accounts are created directly by sections 15A to 15D, whereas the definition of a contingency reserve account alone builds in a rule-based precondition. The Authority disputes this, pointing out that the definitions of member and employer surplus accounts also refer to accounts "provided for in the rules of the fund". Even on the Authority's reading of those definitions, *British American Tobacco* was concerned with the accrual of beneficiaries' rights and the corresponding debit, not with whether approval could create an account in the absence of a rule; that question was neither argued nor decided. We address the definition of the contingency reserve account as at the date of approval of the SAS below.

39. The Authority advanced three further arguments:

    39.1. First, it relies on the opening words of section 1, that defined terms bear their defined meaning "unless the context indicates otherwise", and contends that the surplus provisions, regulation 35 and PF Circular 117 supply such a context. A departure from a statutory definition is

warranted only where applying it would produce an incongruity or defeat the evident scheme of the provision in which the term appears. In our view, no such incongruity arises here. Applying the definition as written leaves the surplus regime fully effective: the reserved amount is excluded from distributable surplus from the SAD and must be preserved and accounted for, while the account through which it is administered is established in the manner the Act prescribes. Nor is that reading "unbusinesslike", as the Authority contends. It protects members fully, and requires only that the account structure be established by the instrument the Act designates for that purpose.

39.2. Second, it relies on sections 15B(4)(b) and 15B(5)(e), which refer to a contingency reserve account "explicitly established" for the purposes there stated, and submits that those words would be superfluous if a registered rule were required. We do not agree. The words identify the purpose for which the account must be established, namely the satisfaction of particular claims, and require that the account be dedicated to it. They say nothing about the instrument by which it is established. Read with the definition, which governs the meaning of the expression wherever it appears in those provisions, they require an account that is both provided for in the rules and explicitly established for the stated purpose.

39.3. Third, it points out that the definition of a contingency reserve account was inserted with effect from 7 December 2001, the date on which the surplus legislation came into operation, when no fund had an approved

scheme or had established reserves for the purpose of determining surplus. As the Supreme Court of Appeal explained in *Hortors Pension Fund v Financial Sector Conduct Authority* [2020] ZASCA 141 paras 47–49, the definitions of actuarial surplus and contingency reserve account have been amended over time. The express reference to an account "provided for in the rules of the fund" was introduced by the Financial Services Laws General Amendment Act 45 of 2013. After more than a decade of experience of the surplus regime, the legislator purposefully tied the contingency reserve account to the rules. The SAS of the Pension Fund was only approved in March 2020 when the definition introduced by Act 45 of 2013 was already in place.[19] Consequently, reference to 7 December 2001 does not answer the Funds' complaint.

40. We do not hold that no contingency reserve could validly have been established before 2014 without an express rule of the kind now contemplated, nor do we determine every historical consequence of section 40B. If, on remittal, the Authority contends that a particular account arose under the law as it stood at a particular time, independently of a rule amendment, it must identify that basis and apply it to the facts of that account and that period.

41. The qualification in section 13 that the rules are binding "subject to this Act" does not answer the difficulty. The primacy of the statute means that the statute

[19] The Authority dispensed with the SAS in respect of the Provident Fund on noting the nil return in March 2020.

prevails over an inconsistent rule; it does not mean that the statute itself creates an account or alters the effective date of a registered rule.

REGULATION 35, PF CIRCULAR 117 AND THE NIL RETURN

42. Regulation 35(1) to (3) recognises that the power to establish contingency reserve accounts vests in the board, requires the valuator to motivate the establishment and magnitude of such an account, and permits the Authority to reject an unsatisfactory motivation. The regulation is supervisory. It does not provide that approval of a surplus scheme constitutes registration of a rule, or fixes the effective date of any amendment.

43. In *Hortors* the Supreme Court of Appeal emphasised that "a board is the protagonist in directing and controlling the operations of a pension fund" (para 59), held that a regulation must be consonant with the provisions of the PFA (para 61), and declared regulation 35(4) invalid and unenforceable because the Minister had exceeded the powers conferred by the Act (paras 64 and 72).

44. The establishment of a contingency reserve account is a decision that the Act entrusts to the board. The board decision still requires a registered rule. It is thus not a consequence generated automatically by the regulator's approval of a SAS.

45. PF Circular 117 requires the need for, and amount of, proposed contingency reserves to be justified before surplus is apportioned, and cautions that historical reserve accounts do not automatically continue after the SAD. It is concerned with the actuarial legitimacy and quantum of reserves. Paragraph 4 contemplates

that a board may establish a contingency reserve account before a surplus is apportioned.

46. The Provident Fund requires separate consideration. The Authority's letter of 6 March 2020 expressly noted a nil return under section 15B(11) and dispensed with a SAS unless the information furnished was materially incorrect. The Authority's reasons nevertheless attribute to that noting the same account-creating effect as the approval of the Pension Fund's scheme, asserting that on noting "these contingency reserve accounts came into effect, replacing the contingency reserve accounts that had previously been held".[20]

47. The liabilities and contingencies that supported the nil return cannot be ignored, and the Provident Fund must account for them and their subsequent treatment. Whatever the position under an approved scheme, the reasons identify no statutory basis on which the noting of a nil return could establish accounts for which the rules did not provide, or extinguish those that existed. The Authority must examine the statutory effect of the nil return on its own terms.

TENSION IN THE AUTHORITY'S APPROACH

48. The following features disclose a tension in the Authority's approach:

48.1. The Authority registered the Funds' rule amendments with effective dates in March 2022 and August 2024.[21] The Authority contends that the amendments formalised or aligned the rules with an existing statutory

20 Record, Vol 1, p1J, para 24 (Provident Fund).
21 Record, Vol 1, p7, para 26.

position. Their later effective dates do not disprove that contention. They do, however, make it necessary to identify and distinguish the asserted earlier statutory foundation from the subsequent rule-based one;

48.2. The Pension Fund's account of the meeting of 6 October 2025 records a proposed further amendment to make the accounts effective from the SAD. That account calls for explanation along with the later assertion that approval had already established the accounts independently of the rules. Whether a further amendment with retrospective effect should be sought is not a matter on which we express any view; and

48.3. The Authority's further reasons describe the surplus documents as "representing the board's decision on the appropriate contingency reserve accounts *to be* established by the fund"[22] and state that the rules "should indeed have been amended with effect from the surplus apportionment date by the board …".[23] The significance of these statements is two-fold: first, they recognise that the contingency reserve accounts were *to be* established; and second, they recognise that the rules should have been amended retrospectively from the SAD. These statements are difficult to reconcile with the Authority's asserted position. Moreover, the Authority approved the rule amendments without the retrospective provisions (section 12(4)).

22 Record, Vol 1, p1H, para 21.
23 Record, Vol 1, p1L, para 30.

SUBSEQUENT EVENTS AND THE OUTSTANDING ACTUARIAL ISSUES

49. We accept the Authority's submission that events after a valuation date may be relevant where a report is prepared after that date. The 2020 surplus decisions cannot be excluded from consideration simply because the reports concern earlier periods. The Authority's reliance on *Stevens and Others v Bell and Others* [2001] EWHC 13 (Ch) para 29 is to the same effect. That passage addresses the possible relevance to an actuarial certificate of a notice given after the valuation date but before certification, and suggests that the actuary may take its effects into account by analogy with the reporting of post-balance-sheet events in company accounts. It does not, however, establish a universal obligation to recognise every later event.

50. *Stevens v Bell* does not suggest that a later event alters the law governing earlier transactions or the actual factual position. The reports must take account of the binding consequences of the surplus decisions and the terms and effective dates of the registered amendments.

51. Equally, the Funds have not shown that the reports must be accepted because the dispute concerns nothing more than the identity of accounts. The Authority's further reasons identify negative opening reserve balances and transfers between accounts. The statement that "[a] negative balance in a contingency reserve is not appropriate" is set out in the Authority's further reasons.[24] The Authority's 27 May 2025 letter records that operational expenses which, in terms of the rules, were to be funded from the reserve were paid directly from the

[24] Record, Vol 1, p1K (schedule to para 26); see also p1L (schedule to para 28).

member account; and that a contribution towards expenses was "to be applied retrospectively from January 2009 to December 2015".[25] These are matters of substance.

52. The record also shows that the Pension Fund's 2011 SAV report contains separate columns for the actual and the submitted 2008 positions. The latter, as the report explains, is the position "after recommendations" and includes the reserves identified in the surplus exercise. The absence of the reserve names from the actual-position column is therefore not the whole enquiry.

53. A satisfactory reconciliation must do more than reproduce aggregate totals. It must enable the Authority to trace each material allocation or provision, to understand the basis for its treatment, and to determine whether any obligation has been omitted, understated, duplicated, discharged or impermissibly diverted. Any adjustment, release or reallocation must likewise be explained and legally justified. That the same total remains somewhere within a fund does not, by itself, establish compliance. We agree with the Authority that this exercise is the valuator's to perform, and that it belongs in the reports themselves. The valuator's 22 June 2025 reply to the Authority's 27 May 2025 inquiry regarding transfers, benefit figures and direct expense deductions confirms the substantive nature of the inquiry.[26]

54. We accordingly make no finding that all the amounts were preserved, that the existing reconciliations are sufficient, that the expense deductions were lawful, or that either Fund was financially sound at the relevant dates. The Funds'

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25 Record, Vol 2, Part B, Item 8, pp161-162, para 2.5.
26 Record, Vol 2, Part B, pp165 -169 at p168, para 2.3.

assurances on those matters remain subject to scrutiny, and the Authority's earlier acceptance of the Funds' annual financial statements does not preclude such scrutiny.

REASONS FOR REMITTAL

55. The Authority held that the 2011 SAV reports did not correctly reflect the Funds' financial condition because they "continue to reflect the contingency reserve accounts that had ceased to exist and do not reflect those that were established by virtue of the surplus apportionment schemes", and the 2014 and 2017 reports were rejected as a consequence. On this premise, the Authority determined the opening position demanded for the 2011 SAV and, through it, the rejection of all six reports.[27] In our view, the decisions rest upon an erroneous legal foundation for the opening structure that is required.

56. In the circumstances, the appropriate course is to set the decisions aside and to remit the matter to the Authority under section 234(1)(a) of the FSRA.

57. The matters identified in paragraphs 51 to 53 above are matters of substance. However, the Authority's rejections were not founded on those matters: they were founded upon the incorrect legal premise that the approved SAS established the accounts from the SAD. Consequently, the Funds' replies were not considered by the Authority on the correct legal premise, and the Funds ought therefore to have a full opportunity to respond on the correct legal premise.

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[27] Record, Vol 1, Part B, p1L, para 31; p1M, paras 33-35.

58. In view of the conclusion that a remittal would be appropriate, it is unnecessary to decide each of the Funds' remaining grounds separately.

ORDER

59. In the result, the following order is made:

59.1. The application for reconsideration is upheld.

59.2. The decision of the Financial Sector Conduct Authority communicated on 13 January 2026, rejecting the Electrical Contracting Industry Provident Fund's statutory actuarial valuation reports as of 31 December 2011, 31 December 2014 and 31 December 2017, is set aside.

59.3. The decision of the Financial Sector Conduct Authority communicated on 15 January 2026, rejecting the Electrical Contracting Industry Pension Fund's statutory actuarial valuation reports as of 31 December 2011, 31 December 2014 and 31 December 2017, is set aside.

59.4. The matters are remitted to the Financial Sector Conduct Authority for reconsideration in terms of section 234(1)(a) of the Financial Sector Regulation Act 9 of 2017.

Signed on behalf of the Tribunal on 18 November 2026.

__Sgd Adv G Goedhart SC_____

G Goedhart SC (Chair)