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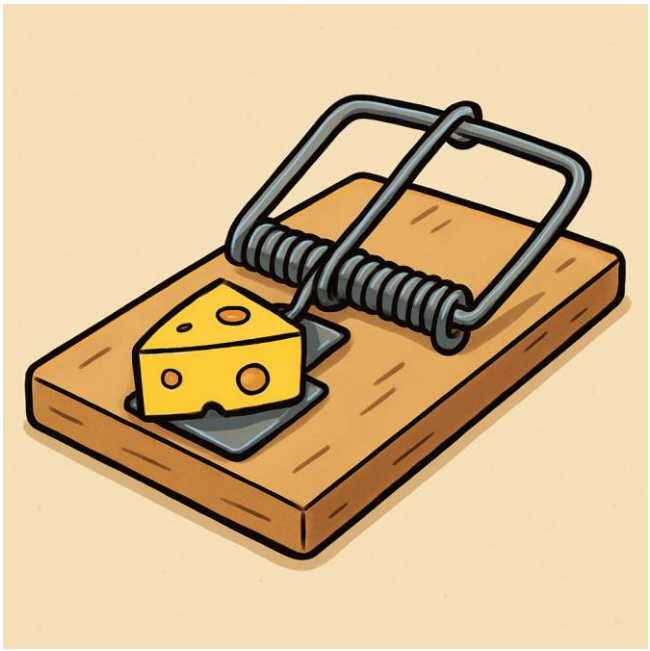
THE DEBARMENT TRAP: ARE YOUR SECTION 14 PROCESSES SETTING YOU UP FOR TRIBUNAL REVERSAL?

Two recent Financial Services Tribunal decisions have made headlines across the FSP community, exposing critical weaknesses in how providers approach representative debarments under Section 14 of the FAIS Act.



In *N Ngcobo v Discovery Connect Distribution Services* (September 2025) and *BP Nyembezi v OUTsurance* (November 2025), the Tribunal set aside debarments that many FSPs would consider "textbook cases", yet both collapsed under scrutiny due to procedural and substantive failures.

What Went Wrong?

Discovery Connect's case involved allegations that a representative failed to ask medical questions, capture conditions properly, and conduct adequate needs analyses. The representative was debarred despite being the 3rd overall top performer in her first quarter and working under supervision.

OUTsurance's case centred on allegations of system manipulation, fictitious customer leads, unauthorised policy additions, and conflicts of interest. The representative had worked with OUTsurance since 2008 as a broker manager overseeing 17 brokers.

Both debarments were overturned because the FSPs failed to satisfy the fundamental requirement of Section 14(1): being "*satisfied based on available facts and information*" that the debarment was justified.

The Tribunal's Damning Findings

The evidence gaps were glaring:

- No call recordings were retrieved or provided, despite both applicants repeatedly referencing recorded lines that would settle material disputes.
- No witness statements from clients or team members to corroborate allegations.
- Inadequate investigation reports—in Discovery's case, merely "a table summarizing calls with remarks that certain questions were not asked".
- Material disputes left unresolved, forcing the Tribunal to conclude that FSPs had not properly satisfied themselves of the grounds for debarment.

Perhaps most critically, both FSPs conflated operational errors or policy breaches with the statutory threshold of dishonesty and lack of integrity. The Tribunal was explicit: "*Failure to follow a script and capture underwriting responses…is not demonstrative of dishonesty…and a lack of integrity for purposes of section 14*".

The Section 14 Standard: (Higher Than You Think!)

The Tribunal reinforced that debarment requires FSPs to demonstrate actual dishonesty—not mere incompetence, errors under supervision, or even contractual breaches. As referenced in OUTsurance's own debarment policy: "*A debarment is a serious action…and requires proper consideration of the facts of each case on its respective merits*".

Yet FSPs continue to rush debarments based on:

- Unresolved factual disputes
- Evidence they *could* obtain but haven't
- Confusion between employment disciplinary matters and regulatory fit-and-proper assessments
- Assumptions rather than documented proof of dishonesty

The Growing Risk for FSPs

With FSP-initiated debarments rising by 43% between 2023/24 and 2024/25, the FSCA has warned about FSPs initiating proceedings only after the six-month window has lapsed, "*undermining the effectiveness of the debarment process*".

But equally concerning is the quality of debarments being processed. Overturned debarments expose FSPs to:

- **Reputational damage** in an industry under intense regulatory scrutiny
- **Potential civil claims** from wrongfully debarred representatives
- **FSCA attention** regarding compliance culture and governance
- **Operational disruption** when matters are remitted for reconsideration

How can we help you?

At Cyclopedic Consulting, we specialise in ensuring FSPs navigate the Section 14 debarment process with procedural rigour and substantive compliance. Our advisory services include:

Pre-Debarment Due Diligence
We conduct thorough reviews of your investigation findings, evidence base, and legal grounds before you initiate debarment proceedings—identifying gaps that would lead to Tribunal reversal.

Section 14 Process Design & Implementation
We help FSPs develop robust, legally compliant debarment policies and procedures that distinguish between employment matters and regulatory fit-and-proper assessments.

Evidence Standards & Documentation
We advise on what evidence is required to satisfy the "available facts and information" test, including call recordings, witness statements, forensic reports, and proper investigation methodology.

Procedural Fairness Review
We ensure your debarment process meets the statutory requirements of being lawful, reasonable, and procedurally fair—protecting both the FSP's interests and the representative's rights.

Tribunal Representation & Strategy
Should a debarment be challenged, we provide expert guidance and representation before the Financial Services Tribunal, drawing on deep regulatory and legal expertise.

Training & Capacity Building
We deliver targeted training for compliance officers, HR teams, and management on Section 14 requirements, ensuring your team understands the distinction between performance management and regulatory debarment.

The Cyclopedic Difference

Cyclopedic Consulting brings both regulatory insight and commercial pragmatism to the debarment process.

We don't just tell you what went wrong—we help you get it right the first time, protecting your FSP from costly reversals while ensuring the integrity of the financial services industry.

As these recent Tribunal decisions make clear, the debarment process is not just an HR function—it's a regulatory compliance imperative that demands specialist expertise.

References:

- *Ntokozo Ngcobo v Discovery Connect Distribution Services (Pty) Ltd*, FSP 20/2025 (10 September 2025)
- *Bonginkosi Peter Nyembezi v OUTsurance*, FSP45/2025 (18 November 2025)

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