



Reference Number: FS/2017/007

**IN THE UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

CHRISTIAN BITTAR

Applicant

-and-

THE FINANCIAL CONDUCT AUTHORITY

Respondent

DIRECTIONS

UPON the applications set out in an email from the Applicant's solicitors dated 18 July 2017

AND UPON hearing Leading Counsel for the Applicant and Leading Counsel for the Respondent on 26 July 2017

IT IS HEREBY DIRECTED THAT:

1. The application of the applicant for the hearing of a preliminary issue on the question of limitation is dismissed.
2. Subject to further order, except with the consent of the Applicant, the Respondent shall not publish the Decision Notice or make the Reference public.

3. Subject to further order, the Register maintained by the Tribunal pursuant to Rule 3(1) of Schedule 3 of the Upper Tribunal Rules shall not include particulars of the Reference
4. The trial of the Reference that has been provisionally fixed for 6 to 29 March 2018 shall be vacated.
5. The applicant and the respondent are to write to the Tribunal within 7 days of the conclusion of the criminal trial with their dates to avoid for a CMC for one day on the first available date from 14 days after the conclusion of the criminal trial.
6. Subject to further order, the Reference shall otherwise be stayed pending the final determination of the criminal proceedings against the Applicant.
7. The parties shall have liberty to apply.

REASONS

1. With regard to the privacy directions sought by the applicant, although there is a strong presumption in favour of publication of a Decision Notice, bearing in mind the Authority's statutory duty to publish pursuant to s 391 of the Financial Services and Markets Act 2000, in my view there is a compelling reason not to publish a Decision Notice when to do so would give rise to a real risk of serious prejudice in relation to pending criminal proceedings. In my view if there is cogent evidence of such a risk than it would be unfair to publish the notice.

2. In this case, the proximity of the criminal trial is sufficient to give rise to a real risk of serious prejudice, bearing in mind the publicity likely to be engendered by the initial publication and the likelihood that such publicity will be refreshed by the reporting of the interlocutory proceedings in the criminal trial in September. In my view, the fact that the criminal trial has been postponed until April 2018 does not mean that the gap between publication and the criminal trial will be long enough to minimise that risk to the extent that publication should be permitted.

3. With regard to the question of a stay of the proceedings, pending the conclusion of the criminal proceedings, my view there is a real and serious risk of injustice to the applicant if they stay were refused on the basis that it would be oppressive to expect him to prepare for both sets of proceedings in parallel, as would be the case if the Authority's proposed timetable for the progression of the reference were adopted.

4. Although experience suggests that it may be unwise to assume that the criminal proceedings will be concluded by July next year, on the assumption that they were or shortly thereafter, then a realistic timetable for the progression of the reference should lead to it being heard in

the early part of 2019. That would only be a few months after the timetable suggested by the Authority were there not be a stay at this point.

5. Furthermore, the outcome of the criminal trial may well clarify and narrow the issues to be determined on the reference, and may, depending on the result of the criminal proceedings, result in the reference being withdrawn or the Authority not pursuing it. In those circumstances, there is a clear benefit in waiting for the outcome of the criminal proceedings.

6. In relation to the application for a preliminary issue, for the reasons given by Mr Stanley in his submissions, I was not satisfied that the limitation issue was sufficiently succinct in this case to justify the hearing of a preliminary issue, bearing in mind that it is right to exercise considerable caution before directing the hearing of a preliminary issue. Although a limitation issue is often suitable for determination as a preliminary issue, in a case such as this where it may well be necessary to deal with considerable amount of evidence and where the limitation issue is only relevant to one aspect of the reference it does not appear to me to be appropriate.

7. Furthermore, the hearing of the preliminary issue in public, and the fact that the amount of the financial penalty proposed is likely to come into clear relief and become subject of considerable publicity is likely to engender further publicity which is undesirable in the context of the proximity of the criminal proceedings. I would be very reluctant to direct a private hearing or any reduction of a decision in circumstances where the point at issue has wider importance.

TIMOTHY HERRINGTON

UPPER TRIBUNAL JUDGE

RELEASE DATE: 01 August 2017