Neutral Citation Number **[2025] UKUT 00123 (TCC)**

UT (Tax & Chancery) Case Number: UT/2023/000050

Upper Tribunal
(Tax and Chancery Chamber)

Location: Decided on the papers

FINANCIAL SERVICES – application to amend reference.

Decision date: 06 August 2024

Decided by:

DEPUTY UPPER TRIBUNAL JUDGE MARK BALDWIN

Between

DARREN ANTONY REYNOLDS

Applicant

and

THE FINANCIAL CONDUCT AUTHORITY

The Authority

DECISION

INTRODUCTION

1. For reasons set out in my decision dated 19 April 2024 (the "April Decision"), I allowed the Applicant ("Mr Reynolds") to apply for permission to further amend his Amended Reference.

2. The April Decision sets out the procedural history of Mr Reynolds' reference, the reasons why I allowed Mr Reynolds to apply for permission to further amend his Amended Reference and the terms on which I did so.

3. Because I was unsure of what amendments Mr Reynolds would be seeking to make, I made it clear, in the April Decision at [43], that any application Mr Reynolds might make "must set out succinctly, but comprehensively and very clearly, so that there can be absolutely no doubt at all about [Mr Reynolds'] position, precisely why he says that the Authority are wrong to conclude in the Decision Notice that he lacks integrity. He should also indicate what evidence he would lead to support his factual allegations."

4. On 17 May 2024 Mr Reynolds applied for permission to further amend his Amended Reference. On 13 June 2024 the Authority made submissions in reply to Mr Reynolds' application and Mr Reynolds briefly replied to those submissions on 19 June 2024. I also have Mr Reynolds' submissions dated 7 February 2024 and the Authority's submissions in response. These were submitted after a directions hearing on 26 January 2024 and were the materials I considered in reaching my April Decision.

5. On 19 July 2024 I released a decision (the "July Decision") setting out the extent to which I proposed to allow Mr Reynolds to further amend his Amended Reference and invited the parties' final comments. I received comments from Mr Reynolds on 26 July and from the Authority on 2 August. This decision is essentially my July Decision, revised in the light of those comments.

MR REYNOLDS' APPLICATION

6. Mr Reynolds seeks permission to further amend his Amended Reference to challenge the claim in the Decision Notice of not acting with honesty and integrity. He summarises the allegations against him as follows:

(a) Arranged and received commissions;

(b) Advised customers to invest in P6 knowing it was not suitable;

(c) Falsified P6 application forms;

(d) Advised and persuaded customers to transfer out of the British Steel Pension Scheme (BSPS) when he knew it was not in their best interests;

(e) Wrote suitability reports to create the false impression that he had provided suitable advice;

(f) Failed to disclose the existence of exit fees;

(g) Knowingly allowed two people to provide pensions advice without being approved persons;

(h) Dishonestly misled the FCA and the Insolvency Service;

(i) Recklessly allowed the destruction of relevant evidence (i.e. the website and emails).

7. Mr Reynolds' position in relation to these allegations is as follows:

(a)-(c) He accepts that he received commissions but says that it was not done with an intention to act without honesty or integrity. (Mr Reynolds did not elaborate on this in his application, but in the April Decision I recorded my understanding of his position as being that he accepts that the commissions were not allowed but says that he did not structure how they were received to conceal this and he submits that others were paid in the same way, and he believed that the Authority knew that Greyfriars was paying commissions and did not object to it.) As regards (b) and (c), Mr Reynolds says that he has maintained from the outset that the business model and risk profile of P6 and way the forms were completed were standardised and as advised to him. To prove this, Mr Reynolds intends to obtain evidence from Greyfriars and all the firms that advised on P6. He says that this could be done by going directly to the firms involved, which would take a very long time. However, he says that the Authority already has all this evidence. Therefore, by gaining permission from the relevant companies, he will be able to gain access to those files and prove these points. If necessary, he can add statements from relevant people at those companies, all of which will highlight (he says) that while he may have been foolish and negligent in believing what he was told, he did not act dishonestly or without integrity. He says that he was not alone in making these mistakes. This evidence will show that he made every effort to obtain information and guidance about the investments he was recommending and accepted what another regulated firm and its employees were telling him.

(d)-(e) Mr Reynolds intends to obtain all the files of Active Wealth's BSPS clients from the liquidator. He says that, within the factfinds from those files, each client outlined the reasons why they were considering transferring out of BSPS. These documents were signed by the clients. He will show that the advice given addressed the needs of the clients. Therefore, he says, to suggest that his advice was not in their best interests or to assert that he 'doctored' the suitability reports will be shown to be simply wrong. The suitability reports were completed to provide an accurate record of the discussions with clients and the advice given. Having access to those files will enable him to prove this point. The advice given orally to clients was reflected in the contents of the suitability reports issued to them. Also, Mr Reynolds intends to compare his reports with the template report obtained from the compliance advisor firm, Simplybiz, regarding advice on defined benefit pensions at the time Active Wealth started trading, and he will show that the specifics varied to reflect the circumstances of each individual client, including their financial position, attitude to risk and objectives. He will also obtain a statement from the independent compliance consultants he used regarding their opinion and advice on the structure of suitability reports. He also intends to approach the FSCS to find out why calculations of loss for some clients who have complained more recently show zero shortfalls. This would help to prove that, despite the Authority's statements of severe detriment, the current fund values are more than needed to provide comparable benefits to those which would have been available had the clients stayed in BSPS. This is (he says) even more the case when these investments are compared to the BSPS '2'scheme that was replacing the original BSPS at the time but with much lower benefits. This again would prove that the transfer was suitable, based on the wants and needs of the client, shown in the factfinds, and led to no financial detriment. Mr Reynolds highlights that the Authority had files for many months without stating what was wrong in the process. Also copies of the suitability reports were sent to professional indemnity insurers when obtaining insurance and they also did not raise any issues. That aside, if the process was

wrong, it was not done intentionally. At all times Mr Reynolds says that his objective was to achieve the wants and needs of clients.

(f) Mr Reynolds will seek to obtain files from the liquidator of Active Wealth which show will show the document issued to clients that sets out the potential exit fees. It will also show how many clients this document was issued to. He will also obtain client policy statements from the fund provider that show that the exit fee had been waived in the past and for which clients. The early exit fee only commenced after a run on the funds which was occasioned by social media activity.

(g) Mr Reynolds says that he can obtain statements from both persons referred to confirming that they did not give regulated advice. By obtaining the client files and comparing those files to the list of clients that the Authority says were advised by the two persons, Mr Reynolds says that he will be able to show that the advice was given to the clients by authorised members of Active Wealth. He also points out that other introducer firms visited clients to help complete factfinds and collect documents. Introducers helped with the sales process of Active Wealth, including completing factfinds and obtaining and passing on documentation both from and to clients. None of them gave regulated financial advice, as is accepted by the Authority, and neither did the two persons referred to by the Authority. The files obtained from the liquidator of Active Wealth will prove this. In a case against one introducer, brought by the Insolvency Service, at no point was the role of the introducer with Active Wealth shown as constituting advice being given by that introducer to clients rather than by Active Wealth advisers. The process was the same for the two people in question here.

(h) Mr Reynolds says that he did not mislead either the Authority or the Insolvency Service but attempted to answer the questions put to him. He answered the questions put to him openly and honestly at a time when great pressure was being put on him by various government authorities, the press, social media, and client threats.

(i) This again will be proved to be wrong by obtaining a statement from the person who owned the domain. This will show that at most Mr Reynolds was negligent in cancelling the subscription without knowing that all previous emails would be lost.

THE AUTHORITY'S SUBMISSIONS

8. In its submissions the Authority comments on Mr Reynolds' proposed extension to the scope of his Amended Reference as follows:

(a) Mr Reynolds says that he did not act without honesty or integrity but does not go on to articulate any case to substantiate this position. For example, his application does not state (i) whether Mr Reynolds accepts he received commissions in the sums set out in the Decision Notice; (ii) whether he believed such commissions were permitted (and if so, why); (iii) whether he accepts that such payments gave rise to a conflict of interest; or (iv) any explanation for the structures by which those commissions were received by him. These are fundamental aspects of the case against Mr Reynolds in the Decision Notice. It was imperative that Mr Reynolds' proposed case in response to these allegations be set out clearly and precisely.

(b) Mr Reynolds does not say what he claims to have been told by Greyfriars about P6, when, by whom or how. He has not set out what he will contend his understanding was of P6 at the time in light of such information: for example,

whether he understood P6 was high risk, whether he understood it comprised investments in illiquid mini-bonds. He has also not attempted to explain why, on the basis of such information/understanding, he considered such investments could be appropriate for the hundreds of Active Wealth clients who invested in P6. Mr Reynolds would need a positive case on such matters in order to challenge this aspect of the Decision Notice, and it was incumbent upon him to set out such a case in the application.

(c) The application does not articulate any case in response to the allegation that Mr Reynolds made false statements in P6 application forms in order to present Active Wealth clients as meeting P6's criteria for investors. It is therefore unclear whether Mr Reynolds accepts that the statements in issue were false. Nor is it apparent what his explanation would be for signing P6 application forms containing statements about the position of Active Wealth customers which were contradicted or unsupported by the documentation on their files. The application does not grapple with the fundamental point that, even if customers wished to invest in P6, if they did not meet Greyfriars' own criteria for such investments, Mr Reynolds should not have signed application forms claiming they did.

(d) Whilst Mr Reynolds asserts that he will show that "the advice given addressed the wants of the clients, and indeed, met them", Mr Reynolds has not sought to articulate, even in the broadest terms, what he says his advice was, still less why he says he thought it was appropriate. The Authority infers, from his statement that the suitability reports accurately summarised his advice, that Mr Reynolds wishes to argue that he advised members of the BSPS against transferring out of the scheme, but he does not actually say this anywhere. Mr Reynolds does not say whether it is his case that almost all of the 146 members of BSPS whom Active Wealth advised during period of March to November 2017, rejected his advice when they transferred their pension to a SIPP, nor has he set out any other explanation for why these BSPS members chose to transfer out of the BSPS, apparently against his express advice.

(e) The Authority understands that Mr Reynolds wishes to say that the suitability reports accurately summarised the advice which he had given orally to Active Wealth clients. So far as it goes, that is a relatively clear contention, but the evidence which Mr Reynolds says he wishes to rely on to make this good however, simply will not support this. The fact that third parties, including (initially) the Authority, did not spot that the suitability reports set out a false account of the advice given by Mr Reynolds, would not demonstrate that they accurately recorded Mr Reynolds' advice: third parties, who reviewed only the suitability reports themselves, or otherwise advised as to their form and content, would have had no reason to know that they did not summarise the advice actually given by Mr Reynolds. Mr Reynolds has therefore not identified any evidence which would corroborate a case that the suitability reports reflect the advice he actually gave.

(f) As regards the non-disclosure of exit fees charged by certain funds into which Active Wealth clients' pensions were invested, Mr Reynolds does not state what "the document issued to clients that states the potential exit fees" is. Without identifying the document, and the passage or passages within it which he relies on, it is wholly unclear what Mr Reynolds' case that he gave proper disclosure will be. He also does not explain when the document in question was, on his case, issued to clients, or how he will show how many clients the document he relies on was issued to.

(g) Mr Reynolds has not explained matters such as whether he would say that he introduced the advisers to Active Wealth clients and if so, in what terms he did so, nor whether he would say he briefed the advisers as to the importance of not giving pension transfer advice. Mr Reynolds has also not explained whether it would be his case that he met with all Active Wealth clients who were assisted by the advisers in question, and advised them personally (nor how he would rebut the Authority's evidence, direct from Active Wealth clients, that they never met Mr Reynolds). Again, if Mr Reynolds had a real prospect of defending this finding, he ought to be able to set out such matters clearly and succinctly.

(h) Mr Reynolds says that he answered "the questions put to me openly and honestly", which the Authority understands to be a reference to the questions asked by the Authority in interview. In the Decision Notice Mr Reynolds' answers to questions in interviews with the Authority is only one of the various ways in which he is found to have misled the Authority and the Insolvency Service. Whether Mr Reynolds' answers in interviews with the Authority were honest could only be assessed after considering the true position. Since Mr Reynolds has not set out any clear case on the allegations of the Authority in respect of which his answers in interview were found to have been dishonest, the Tribunal will not be able to determine whether Mr Reynolds' answers in interview were honest.

(i) Mr Reynolds addresses this allegation in a single sentence. The Authority understands Mr Reynolds to say that he was negligent (but not reckless) in "cancelling the subscription without knowing that all previous emails would be lost." Mr Reynolds has not said however:

(i) whether he accepts he gave the instruction which led to his Active Wealth emails being deleted;

(ii) if so, to whom the instruction was given;

(iii) what the instruction was;

(iv) why the instruction was given; or

(v) what he understood the consequences would be of that instruction being acted on.

The Authority ought not be required to speculate as to what Mr Reynolds may eventually say about such matters; if he wishes to challenge the Authority's finding, he ought to be able to articulate a case which covers these obvious points. Mr Reynolds' failure to set out an intelligible and straightforward case, even on this point (which is relatively minor in the context of the Decision Notice as a whole) is symptomatic of his general approach to the application.

MR REYNOLDS' REPLY

9. In reply, Mr Reynolds comments as follows:

(a) His application clearly states that the evidence the Authority holds will provide the specific facts to show that he was told and, therefore, believed the commissions to be permitted. He cannot see how, at this stage and without that evidence, he can show that the structures put in place were led by advice from Greyfriars/Best International employees and Robert Rogers, Mr Reynolds' compliance consultant at the time.

(b) Mr Reynolds asks whether the Authority is trying to insinuate that other firms were not advised on P6 by Greyfriars/Best International? Also, he says the

Authority are fully aware of what he was told by the employees of these firms as it has been explained at the various meetings and at the RDC in 2022. They have also included this in various bundles they have provided.

(c) P6 application forms were completed in line with guidance from Greyfriars/Best International and this will be evidenced by the documents held by the Authority that Mr Reynolds intends to request. To say the way forms were completed did not meet Greyfriars criteria, but other firms were putting investments in, indicates that the advisers trusted and were led by the employees of Greyfriars/Best International. Mr Reynolds says that the evidence will show that this was what happened.

(d) – (e) The Authority is fully aware of the structure of the suitability report and how it advises clients on their options. Each factfind will specifically outline the clients' needs and how this is shown in this report. Until Mr Reynolds has that evidence, he cannot refer to it. Corroboration can only occur once the factfind has been compared to the suitability report. Mr Reynolds says that he has not had access to this material since 2018, when Active Wealth went into administration, even though the Authority has.

(f) Mr Reynolds says that the Authority is fully aware of the key features document referred to and have also been made aware that the clawback of fees had been waived in the past.

(g) On obtaining the files from the liquidator, Mr Reynolds says that he will be able to show the processes in each individual case, including that advice was provided by Active Wealth and not directly by the two people referred to by the Authority.

(h) Mr Reynolds says that he does not follow the Authority's position here. He says that it appears the Authority is saying that they cannot decide whether his answers were honest because they don't know his case. He says that he can deal with each of the Authority's examples completely and succinctly in the substantive hearing, including from material already given to the Authority in several interviews and at the RDC meeting.

(i) Mr Reynolds says that the Authority here seems to imply that he is required to explain his case in full within this application. He was under the impression that he was required to outline how he intended to prove his case at the substantive hearing, not lay out the entire case. The Authority has on file his statement regarding communication, to whom, why and what he thought was the outcome. Mr Reynolds suggests that the Authority are not reading their own files.

DISCUSSION

10. Rule 5 of the Rules provides that the Tribunal may permit or require a party to amend any document. Rule 2 provides that the overriding objective of the Rules is to enable the Upper Tribunal to deal with cases fairly and justly. This includes dealing with cases in a way which is proportionate to their importance as well as avoiding unnecessary formality and avoiding delay "so far as compatible with the proper consideration of the issues".

11. The April Decision discusses (at paragraphs [13]-[19]) the factors to be taken into account when deciding whether to allow Mr Reynolds to further amend the Amended Reference, and concludes that the Tribunal should only permit Mr Reynolds to expand the Amended Reference, if it is satisfied that there would be a real prospect of the Tribunal deciding (1) that the full Prohibition was not within the range of reasonable decisions open to the

Authority, or (2) that is appropriate to reduce the amount of the Penalty. To apply any other test would be contrary to the overriding objective, as it would risk significant time and costs being wasted hearing issues the determination of which would not have any real prospect of changing the result of the Amended Reference. I do not understand either the Authority or Mr Reynolds to take issue with my summary of the test to be applied.

12. Although allowing Mr Reynolds to expand the scope of his reference would (without doubt) cause a delay in this matter proceeding to a substantive hearing and increase costs, that needs to be weighed against the very serious nature of the allegations made against Mr Reynolds.

13. In the April Decision I discussed at some length the procedural history of the reference and the confusion (at least on Mr Reynolds' part) as to exactly what had been referred. Even though, as a litigant in person, Mr Reynolds should be given some margin of accommodation, I concluded that he had not always been as careful as one might expect in relation to a point (his desire to challenge the Authority's core findings against him) he says is so important for him. However, weighing all the relevant factors together, I concluded that it would not be fair or just (even at this late stage) to refuse Mr Reynolds permission to amend his reference to refer the allegations of lack of honesty and integrity and the Prohibition and Penalty in that light as long as the points he seeks to make in his expanded reference have a reasonable prospect of getting him a different (and improved) outcome.

14. Relevant to that decision is the fact that the Authority has only alleged a breach of Statement of Principle 1. If Mr Reynolds can establish that he has not breached Statement of Principle 1 (because his behaviour was honest, even if misguided) and if (following *Bluecrest*) a breach of Statement of Principle 2 is not before the Tribunal, Mr Reynolds' chances of obtaining a different outcome would be reasonable rather than fanciful. In any event, Mr Reynolds says that (if Statement of Principle 2 is in point) he took appropriate advice from people who were (or he reasonably thought were) suitably qualified and followed it. So, he says, he has not been negligent.

15. On the authorities as they stand at the moment, an allegation of a breach of Statement of Principle 1 would not result in the question whether Mr Reynolds had breached Statement of Principle 2 being before the Tribunal. This is the natural consequence of the decision of this Tribunal (Judge Herrington and Judge Jones) in *Bluecrest Capital Management (UK) LLP v FCA*, [2023] UKUT 133 (TCC), an appeal against which has recently been heard by the Court of Appeal. I considered whether I should delay deciding on Mr Reynolds' application until the position here is clear. I concluded, however, that this would not be just or reasonable as the delay involved could be very significant, especially if the Court of Appeal's judgement is *Bluecrest* is appealed.

16. I have decided that I should reach a conclusion on Mr Reynolds' application now, so that these proceedings are not delayed any longer, and that I should do so on the basis that the matter before the Tribunal relates only to Statement of Principle 1. If the decision in *Bluecrest* shows that this is wrong and the question of Statement of Principle 2 is before the Tribunal, the Authority can always seek to amend its statement of case in due course to include that issue. Whether it would be given permission to do so and the consequences of Statement of Principle 2 being before the Tribunal are not matters we should speculate on at this point.

17. Another difficulty in dealing with Mr Reynolds' application is that he makes assertions as to what particular bodies of evidence will demonstrate. For example, he suggests that the client factfinds would show that the advice given to clients was correctly recorded in their suitability reports and so the suitability reports have not been (to use his expression) "doctored" and that the advice Active Wealth gave was appropriate. Mr Reynolds does not have access to

any of this evidence at the moment. The Authority has criticised the lack of specificity in Mr Reynolds' statements about the evidence but did not suggest that the evidence does not exist or that it does not prove what Mr Reynolds says it does. The Authority has not admitted this either; it has largely not commented on the evidence. In fairness to Mr Reynolds, I will proceed on the basis that evidence exists and can be produced which will demonstrate what Mr Reynolds claims it will.

18. The final difficulty with Mr Reynolds' application is that he is not legally represented, at least as far as this aspect of his reference is concerned. The Authority criticises the lack of specifics in Mr Reynolds' application, which (they say) falls short of the level of clarity and detail I required (see the April Decision at [93]). I agree with the Authority that Mr Reynolds' application could have been clearer and more specific. I would go so far as to say that his application would not have been acceptable if it had been prepared by counsel or solicitors. However, Mr Reynolds does not have the luxury of legal representation and I consider that it would be fair and just to consider Mr Reynolds' application to the extent that its overall effect is apparent. Clearly, the fact that Mr Reynolds will need to deal with this aspect of his reference alone and unaided, and will need, by the time of the substantive hearing, to fill the gaps the Authority has identified in the positions set out in his application, may well impact on his chances of success. However, I do not consider that his lack of legal representation and the difficulties that will create should count against him when it comes to deciding whether he has a reasonable (as opposed to fanciful) prospect of success for the purposes of deciding this application.

19. Turning now to the various allegations against Mr Reynolds and his and the Authority's position on them:

(a) Mr Reynolds accepts that commissions in excess of £1m were taken which should not have been. The Authority says that, even if Mr Reynolds can satisfy the Tribunal that he believed the commission was permitted and that he was not dishonest (because other advisers were paid in the same way and he believed this was acceptable to the Authority), he would still have received a large amount of commission over a 3 year period in breach of the Authority's rules and that alone would put a full Prohibition within the range of reasonable decisions the Authority could take. The problem with this position for the Authority is that, as it has only asserted a breach of Statement of Principle 1, a negligent or non-negligent breach of the Authority's rules is not before the Tribunal.

(b) As far as investments in P6 are concerned, Mr Reynolds' position is that what he was told by Greyfriars (which he says is known to the Authority) makes it clear that he thought P6 was suitable for investment and why. He has not been specific (for example by explaining in detail what it was he thought about P6), but his position here is clear.

(c) Mr Reynolds' position in relation to completing P6 application forms is that he was guided in completing the forms by Greyfriars/Best International. He has also explained how he assessed clients' net worth and risk appetite and why he says that P6 represents an appropriate proportion of clients' overall investments. However, the Authority's position is that, regardless of all of that and of the fact (if true) that clients wanted to invest in P6, it was wrong of Mr Reynolds to have certified (for example) that particular clients had a high risk profile and capacity for loss, were "high net worth" or were experienced investors in relevant assets or that a client's investment in P6 did not exceed the maximum required by P6 when those statements were not correct in the light of his own assessment of their

positions and the information he had collected. The financial promotion rules exist to some extent to protect people from themselves and so it is a serious regulatory breach for a person such as Mr Reynolds to help an investor circumvent those protections. Even in his final submissions (when this point was very much to the fore) I cannot detect any answer from Mr Reynolds to that allegation.

(d) – (e) Mr Reynolds' position here is clear. He says that the evidence will show that the suitability reports were properly completed (not 'doctored') and they reflected the underlying factfinds. Accordingly, he says that his advice was suitable. He also says that subsequent valuation movements show no loss and vindicate that advice. The relevance of that last point was not initially obvious to me. It made me wonder whether Mr Reynolds' position might now be that he had advised clients to transfer out of BSPS and that advice has been vindicated, but I have been corrected on that. His position appears to be that he advised clients not to transfer out of BSPS, but they had already decided to do so, and accordingly he recommended an alternative provider and there is no loss when that pension provision is compared with BSPS. I agree with the Authority that the suitability reports not being picked up by third parties, who were not comparing them with the underlying factfinds, tells us nothing. But clearly, if the rest of the evidence demonstrates what Mr Reynolds says it does, he might well have an answer to the allegation that he was recklessly or dishonestly making unsuitable recommendations about transferring out of BSPS and "covering his tracks" by writing false suitability reports.

(f) Again, Mr Reynolds has not been specific here, but his position (that exit fees had been disclosed) is clear. If he can produce the evidence (which he says exists and is known to the Authority), he should be able to resist this allegation.

(g) Again, although the evidence is not to hand for Mr Reynolds to review/summarise and he has not been specific about what he did (as opposed to what the individuals concerned did not do), he would seem to have the material he needs to deal with this point.

(h) At the time of my July Decision Mr Reynolds had asserted that he could deal with the allegation that he misled the Authority and the Insolvency Service. He had not, however, given any indication as to his position on the answers which the Authority says were dishonest. In response to my July Decision, Mr Reynolds set out how he would seek to rebut some of the relevant findings in the Decision Notice. The Authority accepts that some of these points would need to be determined at a final hearing, but in their final submissions they identified several examples in the Decision Notice of Mr Reynolds misleading the Authority which he had not responded to. Accordingly, Mr Reynolds' proposed challenge to ground (h) has no real prospect of success. In any event, given my conclusion on ground (c), even if his challenge on ground (h) were successful, this would not affect the outcome so far as the Prohibition is concerned.

(i) Mr Reynolds' position here is, again, lacking in specifics, but his position (that the Authority knows his answer to the question they raise in their submissions) is clear.

CONCLUSION

20. The position I have reached on Mr Reynolds' application, despite its lack of specifics, is that, on the assumptions I have made about the evidence (that Mr Reynolds will be able to produce the evidence he says he can and that it will prove what he says it will), I can see how

Mr Reynolds might be in a position, were I to allow him to do this, successfully to challenge all the allegations against him except (c) and (h).

21. I agree with the Authority that, even if only allegation (c) above were made good, that would constitute a breach of Statement of Principle 1 which would put a full Prohibition into the spectrum of possible regulatory actions. As P6 was the source of a significant part of the income derived, a substantial financial penalty would still be in order. However, if Mr Reynolds could make good his case in relation to the other allegations, it seems to me that the penalty could be significantly reduced. This is because of the way the penalty was calculated, which appears to start by looking at benefits flowing from particular breaches (in particular, allegations (d), (e) and (f); see paragraph 6.5 of the Decision Notice).

22. In the April Decision, I told Mr Reynolds that this application was his last chance and told him how he should frame any application to extend the scope of the Amended Reference. Nevertheless, as explained at [17] above, I consider that I should continue to make some allowance for Mr Reynolds' position as an unrepresented individual against whom very serious allegations have been made.

23. Accordingly, the course of action I propose is to:

> (a) refuse Mr Reynolds permission to amend the scope of the Amended Reference to refer the Prohibition except to the extent I gave him permission to do so on 20 September 2023. The reason for this is that I do not consider that Mr Reynolds' proposed challenges to allegations (c) or (h) to have a reasonable prospect of success, and these allegations are sufficient to put a full Prohibition into the spectrum of regulatory responses open to the Authority;
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> (b) allow Mr Reynolds to amend the scope of the Amended Reference to refer the Authority's finding that he was dishonest or reckless and lacked integrity in breach of Statement of Principle 1 based on allegations (d), (e) and (f), and in consequence the question of the penalty so far as its quantum is affected by those allegations. The reason for this is the way the penalty appears to have been calculated, which looks to start from the benefits flowing from particular breaches (in particular, allegations (d), (e) and (f); see paragraph 6.5 of the Decision Notice). If Mr Reynolds can make good his challenge to any of these allegations, that may produce a different outcome (in the form of a reduced penalty);
>
> (c) refuse Mr Reynolds permission to amend the scope of the Amended Reference except as set out above. The reason for this is that nothing would be obtained by a wider reference as it would have no impact on the outcome as (i) there are already sufficient grounds to justify the Prohibition, and (ii) other allegations (beyond (d), (e) and (f)) appear to have no impact on the quantum of the Penalty.

DISPOSITION

24. In terms of the immediate future progress of this reference, I agree with the Authority that there is not a lot of point at this stage in making detailed directions for the conduct of this reference up to a full hearing. I also agree that the Tribunal is likely to need to be heavily involved in the case management of this reference. Accordingly, for now, I ORDER THAT:

> (1) The Applicant is permitted to amend the scope of the reference to refer the Authority's finding that he was dishonest or reckless and lacked integrity in breach of Statement of Principle 1 on the basis of the allegations described as (d), (e) and (f) in paragraph [6] above and, in consequence, the question of the penalty insofar as its quantum is affected by those allegations.

(2) Otherwise, the Applicant's application to amend the scope of the reference dated 17 May 2024 (including, for the avoidance of doubt, the application to amend the scope of the Reference in relation to the Prohibition Order) is refused.

(3) For clarity, the Reference therefore comprises:

(a) the Limitation Ground;

(b) the Disgorgement Ground;

(c) the Property Transfer Ground;

(d) the Serious Financial Hardship Ground (each as defined in the document headed "Applicant's Reply" dated 18 September 2023);

(e) the breadth of the Prohibition Order, as defined in paragraph [54](2) of the Tribunal's decision dated 20 September 2023; and

(f) the allegations described as (d), (e) and (f) in paragraph [6] above, and the quantum of the penalty insofar as it is affected by those allegations.

(4) The Authority shall by 5pm on 20 September 2024 file and serve a replacement Statement of Case.

(5) The Authority is permitted, as part of its replacement Statement of Case, to amend its case on the Limitation Ground in the form set out at paragraphs 21A, 21B and Annex 2 to the draft Amended Statement of Case provided with its application dated 6 December 2023.

(6) The Applicant shall by 5pm on 18 October 2024 file and serve his Reply to the replacement Statement of Case, which Reply will replace the document headed "Applicant's Response to the Authority's Statement of Case" dated 18 September 2023.

(7) The Applicant shall by 5pm on 18 October 2024 file and serve his amended "Applicant's Reply" in response to the amendments permitted by sub-paragraph (5) above.

(8) The Authority shall file and serve any secondary disclosure list pursuant to paragraph 6 of Schedule 3 to the Tribunal Procedure (Upper Tribunal) Rules 2008 by 5pm on 30 October 2024.

(9) There shall be a hearing to determine the directions for the further management of the reference, to be listed with a time estimate of one day, on the first date convenient to the parties and the Upper Tribunal on or after 11 November 2024.

(10) The parties shall have liberty to apply to amend the deadlines provided in sub-paragraphs (4), (6), (7) and (8) above.

MARK BALDWIN

DEPUTY UPPER TRIBUNAL JUDGE

Release date: 06 August 2024