



Case Number: UT-2023-000053/54

**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER
FINANCIAL SERVICES**

FINANCIAL SERVICES – final decision on the calculation of the amount to be disgorged in financial penalties under section 66 Financial Services and Markets Act 2000

Decided on written submissions on 28 April
and 9 May 2025

Judgment date: 13 May 2025

Before

**JUDGE MARK BALDWIN
MR DUNCAN BLACK
MRS JO NEILL**

Between

**TONI FOX-BRYANT
DAVID BRIAN PRICE**

Applicants

and

THE FINANCIAL CONDUCT AUTHORITY

The Authority

Representation:

For the Applicants: Mr Gareth Fatchett of FS Legal Solicitors LLP

For the Respondents: Mr Adam Temple of counsel, instructed by the Financial Conduct Authority

DECISION

INTRODUCTION

1. This is our third decision in relation to the references (“the References”) made to this Tribunal by Ms Fox-Bryant and Mr Price of two Decision Notices (“the Decision Notices”) dated 3 May 2023, by which the Authority decided to:

(1) impose on Ms Fox-Bryant a financial penalty of £681,536 under section 66 of the Financial Services and Markets Act 2000 (“FSMA”), a prohibition order under section 56 FSMA and to withdraw Ms Fox-Bryant’s approvals to perform senior management functions at CFP Management Limited (“CFP”) under section 63 FSMA; and

(2) impose on Mr Price a financial penalty of £632,594 under section 66 FSMA, a prohibition order under section 56 FSMA and to withdraw Mr Price’s approvals to perform senior management functions at CFP under section 63 FSMA.

2. In a decision (the “November Decision” - Neutral Citation [2024] UKUT 00357 (TCC)) released on 13 November 2024 we dismissed the References as to the prohibition orders and withdrawals of approval. We noted that we agreed with the Authority that significant financial penalties should be imposed on both Applicants, but we decided that the size of those penalties needed to be reviewed in the light of our concern that the disgorgement element of the penalty should take account of the incidence of taxation and further consideration should be given to how interest should be charged on the benefits the Applicants derived from CFP, a company owned 50:50 by the two Applicants. At paragraph [239] of the November Decision we gave directions regarding submissions to be made by the parties on those issues.

3. In a second decision (the “March Decision” – Neutral citation [2025] UKUT 00087 (TCC)) released on 12 March 2025 we explained how the disgorgement element of the penalties should be calculated and remitted the calculation of those penalties to the Authority with a direction that the Authority should calculate the amount to be disgorged (step 1 in the calculation of the penalties) following the guidance we set out in that decision.

4. On 2 April 2025 the proposed figures and the detailed calculations prepared by the Authority were provided to the Applicants. However, despite attempts made by the Authority to agree the calculation with the Applicants, an agreement could not be reached on the revised figures.

5. On 28 April 2025 the Authority sent details of its recalculation of the penalties to the Tribunal and asked the Tribunal to approve these calculations and direct the Authority to issue final notices to the Applicants in the same terms as the Decision Notices issued on 3 May 2023 save in respect of the calculation and amount of the penalties, which should be recalculated as described by the Authority.

6. The Tribunal asked the Applicants’ representative for their comments on the Authority’s request and provided further clarification of the reasoning behind its conclusions on how tax should be factored into the amount to be disgorged in respect of the contributions to and returns derived in the Applicants’ pension schemes.

7. On 9 May 2025 the Applicants’ representative replied welcoming the use by the Authority of an interest rate based on the Bank of England base rate and not disagreeing with the mechanism to provide a tax-based credit. The representative stated that his “only observation is that the pensions were pre-existing and involve other monies”. He also said that “The UT would need to be satisfied that the calculations have been undertaken correctly. My clients cannot agree to the figures as they are unclear as to some of the underlying assumptions made by the Authority.”

DISCUSSION OF THE AUTHORITY'S CALCULATIONS

8. Turning to the Authority's calculation of the penalties to be imposed on the Applicants, we make the following observations:

(1) The Authority has taken its gross figures (which have never been challenged by the Applicants) for non-pension income (the amounts, other than the amounts paid into the Applicants' pension schemes, to be disgorged), deducted the tax adjustment it calculated and then added interest at the Bank of England official rate from time to time compounded every six months to that net of tax figure. This methodology is entirely in line with the approach described in the March Decision. So, in the absence of any reasoned challenge to the Authority's calculation of the gross non-pension disgorgement figure or the tax adjustment figure (the background to which is set out in the March Decision), we approve the Authority's calculation of this part of the penalty.

(2) Turning to the amounts paid into the Applicants' pension schemes, the Authority has taken the amounts contributed by CFP in the relevant period and added to this figure a proportion (which reflects the CFP contributions as a proportion of the total size of the fund) of the total return earned by the pension scheme in the relevant period. So, for example, with Mr Price's pension, the CFP contributions represent 25.81% of the total fund, and the amount to be disgorged in respect of his pension income comprises the CFP contributions plus 25.81% of the investment return. Again, this calculation follows the methodology in the March Decision.

(3) By separating out the CFP contributions to the pension schemes and calculating the proportion of the overall net return that reflects the CFP contributions, in the way we have just described, the Authority's calculation takes into account the fact that the Applicants' pension schemes contain funds not required to be disgorged and addresses their representative's point that "the pensions were pre-existing and involve other monies".

(4) For the reasons discussed in the March Decision, no adjustment for tax is to be made in respect of the amount to be disgorged by reference to an Applicant's pension unless the Applicant indicates that they intend to withdraw funds from their pension scheme to pay that part of the penalty around the time it is calculated. In correspondence with the Authority, the Applicants' representative indicated that the Applicants do not intend to do this.

(5) The methodology adopted by the Authority for calculating the amount to be disgorged in respect of CFP's contributions to the Applicants' pension schemes correctly adopts the approach set out in the March Decision, and so, in the absence of any challenge to the Authority's calculation of CFP's contributions to the Applicants' pension schemes or the investment return earned by those schemes, we approve the Authority's calculation of this part of the penalty.

(6) The Applicant's means are not a factor to be taken into account in calculating the amount to be disgorged. Questions around whether, and if so how, the penalty can be enforced are not relevant to its calculation.

DISPOSITION

9. So far as the prohibition orders under section 56 FSMA and the withdrawal of approvals to perform senior management functions at CFP under section 63 FSMA are concerned, the References have already been dismissed.

10. So far as the financial penalties under section 66 FSMA are concerned, we approve the Authority's calculation as set out in its email to the Applicants' representative on 2 April and the spreadsheet enclosed with its application to the Tribunal on 28 April 2025.

11. We direct the Authority to issue final notices to the Applicants in the same terms as the Decision Notices issued on 3 May 2023 save in respect of the calculation of and amount of the penalties, which will be recalculated as described above.

MARK BALDWIN
UPPER TRIBUNAL JUDGE