



Neutral Citation: [2026] UKUT 00099 (TCC)

Case Number: UT/2024/000095

**UPPER TRIBUNAL**

**(Tax and Chancery Chamber)**

Decided on the papers

19 & 20 February

**Judgment date: 2026**

**Before**

**JUDGE JENNIFER DEAN**

**Between**

**KIAKIAFX LIMITED**

**Applicant**

**and**

**THE FINANCIAL CONDUCT AUTHORITY**

**Respondent**

## DECISION

### INTRODUCTION

1. On 18 October 2024 KiakiaFx Ltd (“the Applicant”) made a reference to the Tribunal in respect of his contention that he was identified in a Final Notice (the “Final Notice”), given by the Financial Conduct Authority (“the Authority”) to Leeds Money Transfer Ltd (“LMT”) on 12 August 2024 and that the Final Notice is prejudicial to him such that he should have been given a copy of the relevant notices by the Authority as an interested third party.
2. Section 393 Financial Services and Markets Act 2000 (“FSMA”) gives third parties certain rights in relation to warning and decision notices given to another person in respect of whom the Authority is taking regulatory action. Sections 393(1) and (4) provide that a third party prejudicially identified in either a warning notice or decision notice respectively must be given a copy of that notice by the Authority (unless he has been given a separate notice in respect of the same matter).
3. The Applicant was not provided with a copy of either the Warning Notice or Decision Notice (together “the Notices”) issued to LMT as the Authority took the view that the Notices did not identify it. In those circumstances a reference can be brought under s393(11) FSMA.
4. On 24 October 2024 Judge Jones identified the interim applications and preliminary issues arising from the reference and issued Directions requiring submissions which addressed the following:
  - (i) The jurisdiction to refer to the Tribunal a Final Decision Notice (as opposed to the earlier Warning and Decision Notices),
  - (ii) The legal basis on which the Applicant has jurisdiction/standing to make such a reference,
  - (iii) The application to extend time in which to refer the Final Decision,
  - (iv) The jurisdiction for it to apply for the effect of the Final Decision of the Authority to be suspended by the Tribunal (the legal basis on which it is possible to suspend a Final Decision Notice);
  - (v) The factual and legal submissions in support of the application for privacy.
5. Both parties confirmed they consented to this matter being dealt with on the papers. The delay in issuing this Decision arose as a result of an administrative delay, throughout which the parties made no contact with the Tribunal.
6. In determining the matters set out above, I have read and considered the written submissions of both parties, together with witness statements (and exhibits) from Mr Abisoye Coker for the Applicant dated 6 and 15 November 2024 and from Mr Toby Hiscock of the Financial Conduct Authority dated 21 November 2024.

## **Background**

7. The following summary sets out the unchallenged background to these applications and is taken from the parties' written submissions, statements and exhibits to the witness statements. As will become apparent, the background was not, in the end, of particular assistance in determining the issues in the case which concerned points of law.
8. In October 2015, LMT was registered by the Authority to provide money remittance services. At that time, LMT was called Abdul Barrie Services Ltd ("ABS"). On 23 November 2018 ABS was re-registered as a Small Payment Institution ("SPI") under the Payment Services Regulations 2017 ("PSRs").
9. For the years (1 January to 31 December) 2016, 2017 and 2018, ABS reported 956, 961 and 974 payment transactions respectively. For the year 2019, ABS reported zero payment transactions.
10. On 25 March 2020 ABS submitted a change in control ("CiC") application in favour of Mr Mohammed Bassem Karesli ("Mr Karesli") which was approved on 23 June 2020 and effected on the same day. ABS changed its name to LMT on 9 July 2020.
11. On 17 July 2020, Mr Karesli submitted a firm details attestation ("FDA") updating LMT's contact information. LMT's principal place of business, registered office and head office addresses were all recorded as being 10A The Crescent, Hyde Park, Leeds LS6 2NW which was also LMT's registered address on Companies House. LMT's email address was recorded as being mkaresli@gmail.com, and this was also given as the contact email address of Mr Karesli. Contact was made with Mr Karesli in August 2020 using this email address.
12. The Authority's records show that for the years ending 2020, 2021 and 2022, LMT reported no payment service activity in its returns and for the years 2021 and 2022, it submitted accounts for a dormant company on Companies House. On 7 January 2023, a 'use it or lose it' case was automatically generated on the Authority's internal system.
13. Mr Hiscock explained in his witness statement that where a firm does not use their permissions for a period exceeding 12 months, they may face enforcement action. The Authority's Enforcement Guide section of the FCA Handbook states at EG19.20.2 that the Authority's approach to enforcing the PSRs will mirror its general approach to enforcing FSMA.
14. On 28 February 2023 the Applicant applied for a CiC of LMT which was approved on 20 November 2023. The Applicant has 100% shareholding in LMT and the director of the Applicant is Mr Abisoye Coker ("Mr Coker").
15. During the CiC process, the Authority requested further information to complete the notification. In a letter dated 21 March 2023, the Authority explained that an individual notification form was required because the corporate controller form had disclosed that there were "controllers of the controller" and that the incorporation statement for KiakiaFX showed that the full share capital was owned by Mr Coker.

16. Mr Hiscock noted that the resubmitted corporate notification form again provided only Mr Coker's details in response to the question "are there any controllers of the controller". KiaKia Finance Limited, ("KKFL") a person with significant control of KKFX (the controller of LMT) was mentioned in relation to its involvement in the financing of the transaction, but Mr Hiscock had seen no record of Mr Coker or the Applicant stating that KKFL was an intended controller of LMT until after the Final Notice had been issued.
17. In an email dated 27 June 2023 Mr Coker confirmed that "There are no other Kiakia entities involved in the proposed transaction i.e. acquisition of Leeds Money Transfer Limited" and stated that KiaKia Business Interco (later confirmed to be a trading name of KKFL) would not become a shareholder of the Applicant.
18. Mr Coker's written evidence highlighted that Companies House shows KKFL is a person with significant control of the Applicant since 30 September 2021 and that KKFL became a person of significant control of LMT on 20 November 2023. Mr Hiscock noted that the PSC02 Notice of relevant legal entity with significant control from Companies House exhibited by Mr Coker in support was filed on 2 April 2024, two and a half years after the event, and that information available on Companies House at the relevant time would not have shown that KKFL was a controller of KiakiaFX. Mr Hiscock further noted that KKFL has not been approved by the Authority as a controller of LMT.
19. During the CiC, Mr Coker had told the Authority that LMT would be offering an online service only, but that LMT would remain at the Crescent Address, utilising the premises for receiving correspondence.
20. In July 2023 the Authority sent Mr Coker a letter outlining concerns that a CiC was not the appropriate route for the Applicant and that it would be more appropriate for it to apply for registration via the authorisations gateway.
21. On 15 September 2023, Mr Hiscock sent LMT a letter, addressed to Mr Karesli, by post and email to abarrieservices@gmail.com and mkaresli@gmail.com. The letter outlined the Authority's concerns with LMT, including that it had not provided payment services since 2018. On 24 September 2023, LMT responded via the email address mkaresli@gmail.com.
22. On 11 October 2023, Mr Hiscock emailed LMT at mkaresli@gmail.com to inform it that enforcement action would be placed on hold until February 2024 to allow LMT some time to begin payment service activity.
23. On 2 November 2023, the CiC was approved and KKFX was approved as a controller via its 100% shareholding of LMT and Mr Coker was approved as a controller via his 100% shareholding of KKFX.
24. On 20 November 2023 Mr Karesli called the Authority in relation to a password reset for LMT's Connect1 account.
25. Mr Coker contended that he had been present when the LMT director telephoned the Authority on 18 March 2024 to change the email address on the Authority's Connect

portal. Connect is the Authority's online system for firms to submit applications and notifications to the Authority. The Authority advised that a new user should be added to the Portal and the online response provided an activation link for the new user which, Mr Coker asserted, his colleague had activated. The email showing the activation link was exhibited by Mr Coker together with a screenshot showing the users as Mr Karesli using the email address [abarrieservices@gmail.com](mailto:abarrieservices@gmail.com) status "enabled" and Mr Bassem using the email address [mohammed@leedsmoneytransfer.co.uk](mailto:mohammed@leedsmoneytransfer.co.uk) with the status "requested". Mr Coker confirmed that the status of the latter when checked on 6 November 2024 remained "requested". Mr Coker contends this is clear evidence that the Authority failed to process the change of email request. Had it done so, LMT would have received all correspondence and provided the evidence required by the Authority before enforcement action was taken. Moreover, Mr Coker submitted, having advised the Authority that the business had gone digital and virtual, it was unreasonable for the Authority to send such important notices by post.

26. On 20 March 2024, the Authority notified LMT by email that it would be proceeding with enforcement action unless it was able to provide evidence that it had provided payment services. LMT did not respond to the email, which was not returned undelivered.
27. On 20 May 2024, the Authority issued a warning notice to LMT ("the Warning Notice"). The Warning Notice was sent to LMT by post to the Crescent Address which remained LMT's principal place of business address as last notified to the Authority and was also LMT's registered address on Companies House until 19 September 2024. The Warning Notice was also sent by email to [mkaresli@gmail.com](mailto:mkaresli@gmail.com). Mr Hiscock explained that he considered whether third party rights applied and concluded that because the Warning Notice did not identify or prejudice any other parties within the meaning of s.393 of FSMA, third party rights did not apply.
28. On 28 May 2024, the Warning Notice was returned undelivered by post with a forwarding address provided, being 24 St Catherines Hill, Leeds, LS13 2LE. A copy of the Warning Notice was then sent to that address and was not returned undelivered. As LMT failed to respond to the Warning Notice, the Authority issued a Decision Notice to LMT on 28 June 2024 ("the Decision Notice"). The Decision Notice was sent by post to the Crescent Address and the St Catherines Hill address and by email to [mkaresli@gmail.com](mailto:mkaresli@gmail.com). The Authority maintained its view that third party rights did not apply to the Decision Notice.
29. LMT failed to respond, and on 12 August 2024, the Authority served a Final Notice on LMT ("the Final Notice") and cancelled LMT's registration as an SPI. The Final Notice was sent by post to the Crescent Address and the St Catherines Hill address and was sent by email to [abarrieservices@gmail.com](mailto:abarrieservices@gmail.com). The Final Notice was also published on the Authority's website on 12 August 2024. After LMT had failed to respond to the Decision Notice, and prior to issuing the Final Notice, Mr Hiscock checked Companies House records and saw that Mr Karesli had resigned as the sole director of LMT on 2 July 2024 and had been replaced by Mr Eromosele Okojie.
30. For that reason, the Final Notice was sent addressed to Mr Okojie. However, Mr Hiscock noted that there is no record of the Authority being notified of a new director or his contact details. Mr Hiscock believed that Mr Karesli was no longer with LMT

and so he emailed a copy of the Final Notice to abarrieservices@gmail.com as that email address still appeared to be associated with LMT, it being the principal user account for LMT in the Authority's Connect system even after the Applicant took ownership of the firm.

31. Mr Hiscock explained that the Authority's enforcement action related to LMT, not to the Applicant. Therefore, the Authority's correspondence was directed to LMT via its director, Mr Karesli and subsequently Mr Okojie at the address formally notified by LMT to the Authority. At no point has Mr Coker been a director of LMT, nor has he been a person responsible for payment services at LMT.
32. Mr Hiscock noted that LMT appeared to have continued using the Crescent Address in its commercial agreements. For example, in an agreement with ABM Global Compliance UK Ltd dated 20 March 2024, an agreement with AB Plus dated 31 January 2024 and in the AB Plus bank statements provided by LMT for April 2024 and July 2024 LMT's address is stated as being the Crescent Address,
33. Mr Hiscock clarified that adding a new Connect user is not the same as providing the Authority with a new contact email address and firms can have multiple Connect user accounts. The correct way to update a firm's contact email address is to submit an FDA.
34. The Authority's records show that on 18 March 2024, LMT drafted an FDA, but it was not submitted. The records show that the draft was automatically deleted on 17 July 2024 and that LMT was warned of the deletion beforehand via an automated email from the Authority. As LMT failed to submit the draft FDA, their contact email address was not updated and the Authority continued attempting to correspond via the email address mkaresli@gmail.com which was the email address last provided by LMT in an FDA and the email address most recently used by LMT to correspond with Mr Hiscock.
35. Mr Coker explained that he first learned of the Authority's decision on or about 25 September 2024. He understands that LMT was unaware until the end of August 2024, after the Final Notice had been issued. Copies of the correspondence issued by the Authority were provided on 4 October 2024.

### **The Notices**

36. Pursuant to regulations 10(2), (3)(a) and (5) of the PSRs (as applied to registered small payment institutions by regulation 15 of the PSRs):
  - (i) A Warning Notice dated 20 May 2024 was given to LMT stating that the Authority was proposing to cancel LMT's registration under regulation 10(1)(h) of the PSRs on the basis it was desirable to do so to protect the interests of consumers in circumstances where LMT's submissions and other communications indicated it was not supplying payment services,
  - (ii) A Decision Notice dated 28 June 2024 was given to LMT stating that the Authority had decided to cancel LMT's registration under regulation 10(1)(h) of the PSRs; and

- (iii) The Authority issued a Final Notice, on 12 August 2024, confirming that it had cancelled LMT’s registration, after no reference was made to the Tribunal challenging the Decision Notice.

37. On 18 October 2024, the Applicant made a reference to the Tribunal challenging the Final Notice on the basis that the Applicant, as LMT’s controller, is a prejudicially identified third party and should have been given a copy of the Notices. No reference has been made by LMT.

38. Before turning to the issues to be determined, I should note that the Applicant appeared in its written submission dated 6 November 2024 to accept that the Tribunal has no jurisdiction under FSMA to entertain a reference in respect of a Final Notice.

39. This was confirmed by the Upper Tribunal in *Banque Havilland SA & Ord v Financial Conduct Authority* [2023] UKUT 00136 (TCC) at [57], as follows:

“Under FSMA, there are numerous provisions giving the Tribunal jurisdiction in relation to specified decisions made by the Authority. However, what is contained in the relevant provisions of FSMA is exhaustive of the Tribunal’s jurisdiction in relation to decisions made by the Authority under the powers given to the Authority in that statute. In many cases FSMA gives the Tribunal jurisdiction over challenges to decisions made by the Authority and contained in Decision Notices. No jurisdiction is given in relation to matters contained in Final Notices or, most importantly, as to whether a Final Notice has been lawfully issued. The Tribunal has no general judicial review function. There are limited rights to commence judicial review proceedings in the Tribunal and to deal with judicial review applications which are transferred to it by the Administrative Court, but none of those powers relate to the lawfulness or otherwise of the issue of Final Notices.”

40. Similarly, there is no jurisdiction under the PSRs for the Tribunal to entertain a reference in respect of a Final Notice confirming that the register has been updated following a decision to cancel a registration under the PSRs.

41. The Applicant, in its submission dated 6 November 2024, contended that the reference should have referred to the Decision Notice given to LMT on 28 June 2024 and, to the extent necessary, applied to amend its reference accordingly.

**The law**

42. Section 393 FSMA provides for third party rights in relation to warning and decision notices given to another person in respect of whom the Authority is taking regulatory action.

43. Sections 393(1), (4) and (11) of FSMA provide as follows:

- (1) If any of the reasons contained in a warning notice to which this section applies relates to a matter which–

(a) identifies a person (“the third party”) other than the person to whom the notice is given, and

(b) in the opinion of the [regulator giving the notice], is prejudicial to the third party,

a copy of the notice must be given to the third party.

...

(4) If any of the reasons contained in a decision notice to which this section applies relates to a matter which–

(a) identifies a person (“the third party”) other than the person to whom the decision notice is given, and

(b) in the opinion of [the regulator giving the notice], is prejudicial to the third party,

a copy of the notice must be given to the third party.

...

(11) A person who alleges that a copy of the notice should have been given to him, but was not, may refer to the Tribunal the alleged failure and–

(a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or

(b) any opinion expressed by [the regulator giving the notice] in relation to him.

### **Submissions and Discussion**

44. The issues identified at [4] above essentially concern three matters: jurisdiction, suspension and privacy. The issue of suspension and other ancillary matters which were identified have been resolved and I will address them briefly. In relation to suspension, the Applicant indicated acceptance that the Tribunal has no jurisdiction to suspend a Final Notice (see [38] – [40]).
45. As regards the application to extend the time limit for making a reference, a large part of the evidence and submissions related to the addresses, whether email or postal, to which the Notices were sent. If the issue concerning whether to extend time in which to make a reference remained live, such points may have been relevant in determining whether or not to permit the Applicant to make a reference out of time. However, for the following reasons I agree with the Authority that an application is not in fact required.
46. Pursuant to para 2(2) of Sch 3 of The Tribunal Procedure (Upper Tribunal) Rules 2008, a reference must be made no later than 28 days after notice was given of the decision in respect of which the reference is made. In this case, subject to the issue of jurisdiction, if the Authority was required by virtue of s393 FSMA to provide the Warning and Decision Notices to the Applicant, I am satisfied that no extension of time

would be required as the documents were provided to the Applicant on 4 October 2024 and the reference made on 18 October 2024. In those circumstances, the relevance of the submissions pertaining to maladministration as alleged by the Applicant is of limited relevance save to provide background information.

47. I should also note that the Applicant's submissions raising allegations of bias and malice on the part of the Authority are also of no relevance as the issues to be determined relate solely to points of law.
48. In relation to the Applicant's application to amend its reference to challenge the Decision Notice dated 28 June 2024 as opposed to the Final Notice, had I granted the application, the reference would in any event be dismissed on the preliminary issue concerning jurisdiction.
49. The Applicant submits that the Tribunal has jurisdiction to entertain a reference from it on the basis that the Decision Notice of 28 June 2024 identifies it, within the meaning of s.393(4)(a) FSMA by referring at paragraph 7 to a change of control on 20 November 2023. The consequence of that CiC was that the Applicant became the controller of LMT.
50. Paragraph 7 of the Decision Notice states as follows:

“On 25 March 2020, the Firm underwent a change in control. The Firm then underwent another change in control on 20 November 2023. Throughout this period, the Firm did not provide any payment services. Since its most recent change in control, the Firm has still not provided any payment services. The Authority considers that firms that are not using their permissions should apply to cancel them and not seek to sell them on.”

51. The leading authority on the construction s393 is the Supreme Court's judgment in *Macris v Financial Conduct Authority* [2017] UKSC 19. At [11] Lord Sumption gave the test of identification in the following terms:

“This appeal turns on the meaning of “identifies” and on the meaning of the notice to which that word is being applied. Both are questions of law, although the answers may be informed by background facts. The essential question before us is what background facts may be relevant for this purpose. In my opinion, a person is identified in a notice under section 393 if he is identified by name or by a synonym for him, such as his office or job title. In the case of a synonym, it must be apparent from the notice itself that it could apply to only one person and that person must be identifiable from information which is either in the notice or publicly available elsewhere. However, resort to information publicly available elsewhere is permissible only where it enables one to interpret (as opposed to supplementing) the language of the notice. Thus a reference to the “chief executive” of the X Company may be elucidated by discovering from the company's website who that is. And a reference to “CIO London Management” would be a relevant synonym if it could be shown to refer to one person and that person so described was identifiable from publicly available information. What is not permissible is to resort to additional facts about the person so described so that if those facts and the notice are placed side by side it becomes apparent that they refer to the same person...”

52. He concluded at [17]:

“The real question is whether the terms of the notice itself would have conveyed to a reasonable member of the public without extrinsic information that any of these terms was a synonym for Mr Macris. Plainly it would not.”

53. The Authority argue that the Decision Notice of 28 June 2024 does not identify the Applicant by name or by using a synonym. In support of its position, the Authority cite *Cooper v Financial Conduct Authority* [2017] UKUT 428 (TCC), where the third-party applicant argued that references in a notice to “compliance oversight” were references to him as the sole holder of the CF10 compliance function within the firm. The Upper Tribunal rejected the argument, stating at [120] & [121]:

“I do accept that if the term “compliance oversight function” had been used in the Final Notice then that would be construed as referring to a particular individual when read in the context of the notice, namely the person holding the CF 10 function as referred to in SUP 10A 7.8. I am assuming that the test for identification assumes that the audience to whom the Final Notice is directed has some knowledge of the regulatory system and that the system provides for individuals performing particular functions to be approved by the Authority. On that basis, applying Lord Neuberger’s test, an individual’s position would have been mentioned, Mr Cooper was the sole holder of that position and reference to freely and publicly available sources of information, namely the Authority’s public register would easily reveal Mr Cooper’s name by reference to his position. Therefore, had that been the case here I would have distinguished the reasoning in *Jan Laury* in so far as “particular function” could properly be referring to the holder of a particular function prescribed by the Authority’s rules.

However, at no point in the Final Notice is there a reference to the “compliance oversight function”. What there is are references to “compliance oversight” without qualification or “compliance oversight systems and controls” or “compliance department” or the “compliance department’s oversight” or “compliance oversight process”. None of those references can be regarded as a synonym for Mr Cooper, on the basis of Lord Sumption’s test, nor is there any reference to a position or office, on the basis of Lord Neuberger’s test. Therefore, Mr Cooper’s claim for third party rights must fall at the first hurdle because it seems to me that there is no reference to any particular individual holding a position but rather references to processes carried out through the firm in which a number of individuals would have been involved...”

54. The Authority note that the question under s.393 FSMA is whether the reasons contained in the notice relate to a matter which identifies the Applicant and is prejudicial to it. The Authority argues that, even assuming (which is not accepted) that the reference to a change in control in the Decision Notice does identify the Applicant, that identification is not in terms which are prejudicial. There is no criticism, allegation or other content capable of being prejudicial to the Applicant in the observation in the Decision Notice that there was a change of control of LMT in November 2023.

55. The comment that the Authority “considers that firms that are not using their permissions should apply to cancel them and not seek to sell them on” is no more than a general observation which refers to ‘firms’ and ‘their permissions’. It is LMT which has a ‘permission’ under the PSRs, not the Applicant (which is not authorised under FSMA or authorised or registered under the PSRs). The statement simply explains one of the reasons why the Authority considers the registrations of inactive firms should be cancelled and does not involve a criticism.
56. The Applicant also suggests in its submission that the requirement of prejudicial identification under s.393 is made out on the basis of statements of the Authority in an email to it dated 6 September 2024, after the Decision Notice had been given. The Authority argue that the test of prejudicial identification under s.393 is concerned with the terms of the notice in question, not with statements in non-statutory confidential communications between the Authority and the firm which post-date that Notice.
57. The Applicant submits that the Authority had sent its letters to email and postal addresses that the Authority had been told not to use. LMT only received the letters and emails from the Authority on 04 October 2024. The criticism in the Final Notice that “The Firm has made no representations in respect to the matters that relate to this Final Notice” is therefore unwarranted.
58. The Applicant argues that it is factually inaccurate to say that LMT had not carried out payment services as there are multiple transactions which started from 08 April 2024. Had the Authority’s communication been properly directed, it would have received evidence of these transactions.
59. On 18th March 2024, LMT had requested the Authority to change the correspondence email address of LMT on file from the previous owner who was using a gmail account to the official email: mohammed@leedsmoneytransfer.co.uk. An autoreply from the Authority suggested that the request was actioned. Also, during the CiC, the Authority was informed that LMT would no longer use The Crescent address for its business and was moving its business to a digital and online model in line with current and global best practices and would no longer be providing payment services in cash, in-person through a shop.
60. The acquisition costs of the CiC cost the Applicant over £150,000 and it should not be prejudiced by the Authority’s maladministration and use of unofficial email addresses.
61. The statement that firms that are not using their permissions should apply to cancel them and not seek to sell them on is prejudicial and without foundation. Substantial cost was incurred in the Applicant assuming management which was sourced as a loan from its parent company and other costs were incurred such as building a new website, investment in App development, advertising, recruitment and marketing.
62. The Applicant contends that the process undertaken by the Authority was prejudicial, malicious and an attempt to jeopardise the legitimate business interest of LMT and its customers. It is believed that the action of the Authority was tainted or influenced by the conduct of an agent of the Authority who tried to refuse the CIC application for unlawful reasons.

63. Mr Coker's witness statement explained that as the Authority stated following a complaint by the Applicant that there is no internal remedy for its maladministration, the fate of LMT and the Applicant's livelihood rests with the Tribunal. He argues that the Authority has acted unfairly and disproportionately. The decision of the Authority may have the consequence that the parent company, KKFL, would demand repayment of its loan immediately, potentially bankrupting the Applicant. Mr Coker could have his overseas representative contract terminated and the Home Office would by default revoke his OBR visa with the result that Mr Coker and his family would have to leave the UK. The decision will cause a further loss of expenses and investments, business relationships and clients and future revenue for the business.

### **Decision**

64. There is no reference by name to the Applicant in the Decision Notice. The question is, therefore, whether the terms used in the Notice would have conveyed to a reasonable member of the public that those terms were a synonym for the Applicant. The relevant terms used in paragraph 7 of the Decision Notice were "The Firm then underwent another change of control on 20 November 2023" and "Since its most recent change in control". I agree with the Authority that the only entity identified by name or synonym in those statements is LMT, identified through the words "The Firm" and "its". None of the other terms used, which describe events, actions or processes, can be said to be the name of or a synonym for the Applicant.

65. The Applicant has not particularised any other means by which it could be said to be identified by the Notice and I am satisfied that it is not so identified.

66. The second element of the test is found in sections 393(1) and (4) FSMA which are concerned with whether the reasons contained in the Notices (whether that be the Warning Notice or the Decision Notice) relate to a matter which identifies a third party and is prejudicial to that party.

67. That the element of prejudice in s.393 FSMA is to be construed narrowly was confirmed in *Banque Havilland SA* at [27] where the Tribunal stated:

"It is clear that...Lord Sumption believed that the limited purpose of s.393 was to enable a third party who has been the subject of criticisms in a Warning Notice or Decision Notice to respond to those criticisms". (see also *Watts v Financial Services Authority* (7 September 2005) at [18]).

68. As the Authority noted, the provisions are concerned with the prejudicial impact of criticism of and allegations against third parties in notices issued by the Authority, as distinct from the prejudicial impact of the regulatory action being taken by the Authority through the notice.

69. The submissions of the Applicant relate, in the main, to the action taken by the Authority and the consequences of the decision to cancel LMT's registration (whether that be in the Decision Notice or Final Decision), for instance loss of costs incurred, potential bankruptcy and loss of livelihood and residence in the UK. There is no criticism or alleged wrongdoing against the Applicant in the Notices, and therefore no identification of it in prejudicial terms. I agree with the Authority that the reference to

firms not using their permissions should cancel them is no more than a general statement, the content of which cannot be said to be prejudicial to the Applicant, more so because if any reference were to be read in, it could only relate to LMT.

70. I also reject the Applicant’s argument which relies on correspondence which postdated the Decision Notice. Extrinsic documents outside of the Decision Notice do not fall within the scope of FSMA which is concerned with the terms of the Notice itself.
71. I therefore consider that even if I were to grant permission for the Applicant to amend the grounds of the reference to refer to the Decision Notice dated 28 June 2024 and not the Final Notice (in respect of which I have inferred it is accepted that there is no jurisdiction) I do not consider that the provisions of FSMA are met and accordingly the Tribunal does not have jurisdiction to entertain the reference under s393.
72. The Applicant applies for suspension of the Final Notice. As set out at [38] – [40] above, the Tribunal has no jurisdiction in relation to the Final Notice as confirmed by the Tribunal in *Banque Havilland SA* at [58]:

“Accordingly, the Tribunal has no jurisdiction to quash a Final Notice or issue an injunction to prevent the Authority issuing such a notice. Those are matters that would have to be addressed in the Administrative Court.”

73. The Applicant has not provided any legal basis or jurisdiction under which the Tribunal could interfere with the Final Notice and I refuse the application.
74. The final issue for determination as identified in the Tribunal’s Directions relates to privacy. The principles applicable to ‘privacy’ applications under rule 14 and paragraph 3(3) of Schedule 3 of the Upper Tribunal Rules are well established: see *Proadhan v FCA* [2018] UKUT 0414 (TCC). The principles were summarised more recently by Judge Redston in *Price v Financial Conduct Authority* [2023] UKUT 224 (TCC) at [39] as follows:

“Those principles are as follows:

- (1) FSMA s 391 gives rise to a presumption that Decision Notices will be published, albeit there must be regard to the fact that a Decision Notice under challenge in the Upper Tribunal is necessarily provisional (*Proadhan* at §20(1)).
- (2) The exercise of the Tribunal’s power to prohibit publication is a “matter of judicial discretion to be considered against this presumption” (*Proadhan* at §20(2)).
- (3) The exercise of this discretion involves a balancing exercise of all relevant factors and giving effect to the overriding objective of dealing with cases fairly and justly (*Proadhan* at §20(3)).
- (4) The open justice principle is to be applied such that the starting point is a presumption in favour of publication in accordance with the strong presumption in favour of open justice generally (*PDHL* at §36(1)).
- (5) The onus is on the applicant to demonstrate a real need for privacy by showing unfairness (*PDHL* at §36(2)).

(6) The scales are thus heavily weighted in favour of publication. In order to tip the scales, the applicant must produce cogent evidence of how unfairness may arise and how it could suffer a disproportionate level of damage if publication were not prohibited (*PDHL* at §36(3)).

(7) A ritualistic assertion of unfairness is unlikely to be sufficient. The embarrassment to an applicant that could result from publicity, and that it might lead the applicant's clients and others to ask questions which the applicant would rather not answer, does not amount to unfairness (*PDHL* at §36(4)).

(8) If it is established by cogent evidence that publication of a Decision Notice would result in the destruction of, or severe damage to, a person's livelihood, it would be unfair to publish that Notice (*PDHL* at §37, citing *Angela Burns v FCA* [2015] 5 UKUT 0601 ("*Burns*") at [89]).

(9) A "possibility" of severe damage or destruction is not enough; there must be a "significant likelihood" of such damage or destruction occurring (*PDHL* at §37, citing *Burns* at [90]).

(10) An applicant is not required to show that damage or destruction is an inevitable consequence (*PDHL* at §37).

(11) A risk of damage to reputation is unlikely to be sufficient to justify a prohibition on publication (*Proghan* at §22).

(12) The nature of the dispute, including questions as to whether the applicant has been treated fairly in comparison with others, or penalised too harshly, are matters to be considered by the Tribunal when it hears the substantive reference and are not matters that can bear upon the question of publication (*Ford* at [50]).

(13) The fact that some information concerning the subject matter of a reference is already in the public domain is a factor which tends in favour of publication (*Ford* at [54]).

(14) The protection afforded to an applicant who is concerned that readers of the decision notice might not understand its provisional nature is to refer the matter to the Tribunal (*Proghan* at [26])."

75. I agree with the submissions of the Authority that the presumption lies in favour of publication in accordance with the open justice principle. The Applicant has not provided any cogent evidence of unfairness or a disproportionate level of damage that has been caused since publication of the Final Notice on 12 August 2024 and I consider, in light of my conclusion that the Applicant is not identified in terms which are prejudicial, that the application must fail.

## **Conclusion**

76. In relation to the preliminary issues and applications my conclusions can be summarised as follows:

- (i) There is no jurisdiction to refer to the Tribunal the Final Decision Notice of the Authority dated 12 August 2024.

- (ii) The Applicant does not fall within the scope of s. 393 FSMA.
- (iii) There is no jurisdiction under which the Applicant can apply for the effect of the Final Decision to be suspended.
- (iv) The application for privacy is refused.

**Deputy Upper Tribunal Judge**

**Released: 03 March 2026**