Neutral citation: **[2026] UKUT 00233 (TCC)**

Case Number: UT/2026/000014

UPPER TRIBUNAL
(Tax and Chancery Chamber)

By remote video hearing

FINANCIAL SERVICES –applications for directions under rule 14(1) and (2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the "Rules") and paragraph 3 of Schedule 3 to the Rules – applications dismissed

Heard on: 21 May 2026
Judgment date: 22 June 2026

Before

JUDGE MARK BALDWIN

Between

PROMETHEAN FINANCE LIMITED

The Applicant

and

THE FINANCIAL CONDUCT AUTHORITY

The Authority

Representation:

For the Applicant: Eliot Maddison, a director of the Applicant

For the Authority: Robin Kingham, of counsel, instructed by the Authority

DECISION

INTRODUCTION

1. By a Decision Notice ("**Decision Notice**") issued pursuant to section 55J of the Financial Services and Markets Act 2000 ("**FSMA**") the Authority notified the Applicant of its decision to cancel the firm's permission to carry on regulated activities.

2. By notice dated 16 February 2026, the Applicant referred (the "**Reference**") the Decision Notice to the Upper Tribunal. At the same time, the Applicant made two applications (the "**Privacy Applications**"):

> (1) Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the "**Rules**"), the Applicant seeks an order prohibiting publication of the Decision Notice pending the determination of the Applicant's reference to the Tribunal.
>
> (2) Pursuant to paragraph 3(3) of Schedule 3 of the Rules, the Applicant seeks a direction that its reference does not appear on the Upper Tribunal's register.

3. We are concerned only with the Privacy Applications, not the merits of the Reference itself.

BACKGROUND

4. As summarised by the Authority, the factual background is as follows:

> (1) The Applicant was authorised by the Authority on 25 July 2016 to conduct consumer credit activity.
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> (2) At the time of authorisation, the Applicant was a debt packager business providing debt advice. The Applicant would generate revenue by referring customers to a debt solution provider, which in turn would pay the Applicant a commission (known as a "debt packager referral fee").
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> (3) Based on its permissions, the Applicant is required under CONC 10.2.8R of the Consumer Credit Sourcebook within the FCA Handbook always to hold the higher of either £5,000 or 0.25% of the Applicant's relevant debts under management. As the Applicant's relevant debts under management were NIL according to its latest regulatory returns, the Applicant was required always to hold £5,000.
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> (4) On 2 June 2023, the Authority published a policy statement (PS23/5) prohibiting debt packager firms from receiving remuneration from debt solution providers for any referral or related service. This ban came into effect from 2 June 2023. However, in the Applicant's case, this was subject to an implementation period which lasted until 3 October 2023.
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> (5) On 2 June 2023, the Authority emailed the Applicant notifying it of the prohibition and requesting details as to how the Applicant proposed to address the implications of the ban (i.e. whether it intended to apply for a variation or cancellation of its permissions).
>
> (6) On 9 June 2023, the Authority emailed the Applicant reminding it of PS23/5 and enquiring whether the Applicant intended to vary or cancel its permissions. On the same day, the Applicant replied that it did not intend to seek variation or cancellation of its permissions. The Applicant also stated that it proposed to move to a non-advisory business

model for its debt resolution services. Further, the Applicant indicated that it intended to issue a claim for judicial review in respect of the Authority's decision to ban debt packager referral fees.

(7) Between 14 June 2023 and 4 January 2024, there was extensive correspondence between the Applicant and the Authority. The Authority requested a copy of the Applicant's proposed new business plan to understand how the Applicant planned to generate revenue in a manner that was compliant with its regulatory requirements.

(8) On 5 December 2023, the High Court refused permission to the Applicant to bring a claim for judicial review of the Authority's decision to ban debt packager referral fees. The Court subsequently ordered the Applicant to pay £15,000 towards the Authority's costs (the "**Costs Order**").

(9) On 1 May 2024, the Applicant offered to pay the Costs Order in instalments of £500 per month for 30 months, beginning at the end of May 2024.

(10) The Applicant has made no payments in respect of the Costs Order to date.

(11) Further correspondence was exchanged between 17 May 2024 and 23 August 2024. The Authority continued to seek clarity on the Applicant's business model and its finances. In particular, the Authority requested a Regulatory Business Plan ("**RBP**"), details of the Applicant's revenue since the debt packager referral ban came into effect, and its financial projections for the next three years.

(12) On 30 September 2024, the Applicant emailed the Authority with the information requested. The email contained a letter from the Applicant together with the Applicant's RBP, details of its income since 3 October 2023, its contracts with two of its then three appointed representatives ("*ARs*"), and its financial projections for 2024/25. Several relevant matters were revealed by these documents:

(a) The Applicant was insolvent within the meaning of section 123(2) of the Insolvency Act 1986;

(b) The Applicant had substantial short-term liabilities;

(c) Since 3 October 2023, most of the Applicant's income (£67,751) had derived from its three ARs; and

(d) The Applicant's financial projections for the next three years were based on estimates, which could change, if (for example) one of the ARs terminated its contract with the Applicant.

(13) In particular, the Applicant's financial projections showed that its total liabilities (£234,455) were significantly greater than its total assets (£142,517), and that the Applicant held a negative equity balance of £91,938. The Applicant's liabilities included monies owed to HMRC totalling £169,000, a Bounce Back Loan totalling £50,455, and the Costs Order totalling £15,000. The projections also indicated that the Applicant expected to hold a negative equity balance in each of the next three tax years.

(14) By letter to the Applicant dated 23 December 2024, the Authority indicated that, having assessed the Applicant's RBP and financial projections, it appeared that the Applicant was insolvent and unable to meet its debts as they fell due contrary to the

Appropriate Resources Threshold Condition and Principle 4. To that end, the Authority requested details of how the Applicant intended to address its financial liabilities. Further, based on the Applicant's assertions in correspondence that it was not carrying on regulated activities in accordance with its permissions, the Authority indicated that the Applicant should apply to cancel those permissions.

(15) Between 7 February 2025 and 14 March 2025, there was further correspondence with the Applicant concerning its ability to meet its financial liabilities.

(16) By letter dated 18 March 2025, the Applicant indicated that its financial projections had been based on the activities that the Applicant was conducting at the time that the RBP was produced, and that it was based on guaranteed income as opposed to possible income. The Applicant indicated that the financial projections did not take into account future possibilities and opportunities for growth, which in turn could generate more income, although they might not materialise.

(17) By letter dated 20 May 2025, the Authority notified the Applicant that the matter would be referred to the Executive Decision Maker for a decision on whether to cancel the Applicant's authorisation. However, before doing so, the Authority offered the Applicant the opportunity of voluntarily cancelling its authorisation. By email dated 3 June 2025, the Applicant declined to do so.

(18) In May and June 2025, HMRC provided the Authority with evidence concerning the Applicant's tax liabilities. This indicated that:

(a) As of 16 June 2025, the Applicant owed HMRC £179,480.54, which included unpaid corporation tax, national insurance contributions, VAT, student loan deductions, late penalty fees, and accrued interest;

(b) HMRC had written repeatedly to the Applicant, including warning it that HMRC would seek to present a winding-up petition or issue County Court proceedings against the Applicant; and

(c) The Applicant had contacted HMRC on two occasions in July and August 2024 to propose repayment plans, but these had not met with HMRC's approval.

(19) On 4 November 2025, the Authority issued a Warning Notice pursuant to section 55J FSMA.

(20) On 17 December 2025, the Applicant made written representations in response to the Warning Notice.

(21) On 21 January 2026, the Authority issued the Decision Notice. The Authority cancelled the Applicant's permission to carry on regulated activities because it had concluded that the Applicant was failing to satisfy the appropriate resources threshold conditions for authorisation. Specifically, the Applicant was balance sheet insolvent and unable to pay its debts as they fell due. The Authority concluded that it was appropriate to take this action to advance the Authority's consumer protection and integrity objectives (sections 1C and 1D of FSMA).

THE LAW

5. Section 391 of the Act includes the following:

> "(1A) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the regulator giving the notice has published the notice or those details.
>
> (2)-(3) …
>
> (4) The regulator giving a decision or final notice must publish such information about the matter to which the notice relates as it considers appropriate.
>
> (5) …
>
> (6) The FCA may not publish information under this section if, in its opinion, publication of the information would be-
>
> > (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
> >
> > (b) prejudicial to the interests of consumers, or
> >
> > (c) detrimental to the stability of the UK financial system…"

6. The Authority is, therefore, obliged to publish such information in such manner as it considers appropriate, in relation to both Decision Notices, unless it considers that to do so would be unfair to the relevant applicant.

7. Schedule 3 to the Rules makes provision for procedure in financial services and wholesale energy cases. Paragraph 3 of Schedule 3 provides that the Tribunal must keep a register of references, which is to be open to inspection. Paragraph 3(3) of Schedule 3 provides:

> "The Upper Tribunal may direct that the register is not to include particulars of a reference if it is satisfied that it is necessary to do so having regard in particular to any unfairness to the applicant or prejudice to the interests of consumers that might otherwise result."

8. Whilst a decision by the Authority to publish a decision notice is not a matter which can be referred to the Tribunal, the Tribunal has jurisdiction to prohibit such publication pursuant to rule 14 of the Rules (on "Use of documents and information"), which provides:

> "(1) The Upper Tribunal may make an order prohibiting the disclosure or publication of—
>
> > (a) specified documents or information relating to the proceedings; or
> >
> > (b) …
>
> (2) The Upper Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—
>
> > (a) the Upper Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
> >
> > (b) the Upper Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction."

9. The principles to be applied in deciding whether to direct that a reference is not to be included in the register or to prohibit disclosure of a decision notice have been discussed in several cases, which are helpfully summarised by Judge Redston in *Fox-Bryant & anr v FCA*, [2023] UKUT 00224 (TCC), at [39] (omitting internal citations):

> "39. There was no dispute between the parties that the principles relevant to privacy applications of this sort are set out in *Prodhan v FCA* [2018] UKUT 0414 (TCC) ("*Prodhan*"). That case also cites and relies on earlier judgments, including *Arch Financial Products LLP v FSA* [FS/2012/20] ("Arch"); *Ford v FCA* [2015] UKUT 0220 (TCC) ("*Ford*") and *PDHL Ltd v FCA* [2016] UKUT 0129 (TCC) ("*PDHL*"). 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.
>
> (2) The exercise of the Tribunal's power to prohibit publication is a "matter of judicial discretion to be considered against this presumption".
>
> (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.
>
> (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.
>
> (5) The onus is on the applicant to demonstrate a real need for privacy by showing unfairness.
>
> (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.
>
> (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.
>
> (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.
>
> (9) A "possibility" of severe damage or destruction is not enough; there must be a "significant likelihood" of such damage or destruction occurring.
>
> (10) An applicant is not required to show that damage or destruction is an inevitable consequence.
>
> (11) A risk of damage to reputation in unlikely to be sufficient to justify a prohibition on publication.
>
> (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.

(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.

(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 (Prodhan at [26]). That paragraph is followed by this citation from *Arch*:

> "50…..Mr Stanley…submits that it is likely that there will be an unreasonable body of investors, fuelled by high emotions as a result of what has happened to the Arch cru funds, who will fail to appreciate that the decisions are provisional and will assume that the Applicants are guilty of what is alleged.
>
> 51. The protection to which the Applicants are entitled in this situation is the right to have the allegations tested in this Tribunal which will in due course deliver a decision in public which will refute unfounded allegations. In addition the Decision Notices themselves set out in detail a summary of the representations that the Applicants made to the RDC which goes some way to explaining their side of the case. No doubt the media will be interested in hearing from the Applicants why they believe the allegations are unfounded."

10. In addition, Judge Redston observed in *Kingsbridge Capital Advisers Ltd v FCA*, [2023] UKUT 000103 (TCC) ("*Kingsbridge*") that the substantive merits of the reference (an applicant's likelihood of success in the substantive reference proceedings) are not relevant matters for the purposes of a privacy application. This reflects a comment by Judge Herrington in *Prodhan* at [23] that:

> "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: see *Ford and others v FCA* [2015] UKUT 0220 (TCC) at [50] ("*Ford*")."

11. In *Prodhan* at [25] Judge Herrington also made the point that:

> "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: see *Ford* at [54] and *Arch* at [53]. "

12. It is an inevitable feature of litigation of all kinds that disagreeable things (including untrue allegations) may be said about parties and witnesses. As a rule, the courts have tended to regard that as an acceptable price to be paid for open justice. That is why the presumption is that decision notices will be published. In *Khuja v Times Newspapers Ltd*, [2017] UKSC 49 ("*Khuja*"), the claimant sought an injunction preventing the publication of information referred to in open court likely to lead to his identification as a person who had been arrested (and subsequently released without charge) during a criminal investigation into child abuse. The Supreme Court held the order sought should be refused. Lord Sumption observed at [34(2)]:

> "[T]he impact on PNM's family life of what was said about him at the trial is no different in kind from the impact of many disagreeable statements which may be made about individuals at a high profile criminal trial. A defendant at such a trial may be acquitted, possibly on an issue of admissibility, after bruising disclosures have

> been made about him at the trial. Within the limits of professional propriety, a witness may have his integrity attacked in cross-examination. He may be accused by other witnesses of lying or even of having committed the offence himself. All of these matters may be exposed in public under the cloak of the absolute immunity of counsel and witnesses from civil liability, and reported under the protection of the absolute privilege from liability for defamation for fair, accurate and contemporaneous publication. The immunity and the privilege reflect the law's conviction that the collateral impact that this process has on those affected is part of the price to be paid for open justice and the freedom of the press to report fairly and accurately on judicial proceedings held in public."

SUMMARY OF THE PARTIES' ARGUMENTS

13. In this section of my decision, I summarise the parties' submissions on the factors they think that I should consider in deciding whether to grant the Privacy Applications

The position of creditors, especially HMRC

14. Mr Maddison exhibited some recent correspondence between the Applicant and the Applicant's largest creditor, HMRC.

(1) In a letter of 10 September 2025, the Applicant responded to a letter from HMRC which had invited it to justify why HMRC should not take legal action against it. The Applicant explained its predicament, that the FCA had effectively prohibited the main source of its income in 2023 and it was seeking to pivot into new areas of revenue generation. It told HMRC that, if it were to be liquidated, that would create substantial financial difficulties for Mr Maddison and HMRC and the Applicant's other creditors would receive nothing. The Applicant described its sources of income as "precarious" and offered to pay HMRC £2,000 a month for the foreseeable future.

(2) HMRC replied on 24 September noting the contents of the earlier letter and chasing Mr Maddison for an outstanding corporation tax return. Mr Maddison was told to call HMRC to discuss payment arrangements.

(3) On 29 October 2025 HMRC wrote to the Applicant warning it of their intention to take county court proceedings as they had not received payment of the amount owed.

(4) Mr Maddison said that the Applicant has had no dealings with HMRC since this letter.

15. Mr Maddison regards HMRC's position, as evidenced by this correspondence, as amounting to a de-escalation from their original position, which was to seek liquidation of the Applicant. He said that HMRC are being reasonable in their dealings with the Applicant, but they will have limits to their tolerance and, if they become aware of the Decision Notice, that would be likely to prompt them to put the Applicant into liquidation. He accepts that there is an element of speculation to this. He has clearly not told HMRC about the Decision Notice or asked them what they think about it.

16. Mr Maddison says that the Authority's own case in its Decision Notice rests on HMRC's enforcement posture. The Authority cannot maintain that posture for the purposes of justifying cancelling the Applicant's registration while simultaneously describing it as speculative for the purposes of the Privacy Applications. The Privacy Applications are directed at the additional and exceptional information that publication of the Decision Notice would supply, namely a regulatory finding by a sister regulator that the firm lacks adequate financial resources. A privacy direction

would protect against a consequence triggered by the Authority's action. Winding-up by HMRC would be terminal and irreversible, whereas nothing would be lost by delaying a matter of months pending substantive determination of the Reference.

17. The Authority does not accept that this correspondence goes anywhere near proving a real risk of substantial prejudice. They say that there is no evidence that HMRC have offered any kind of accommodation to the Applicant at all. They warned the Applicant of county court proceedings. There is no suggestion that the Applicant's offer of paying £2,000 a month has been accepted. Mr Maddison was given a number to call to discuss payment arrangements, but Mr Maddison does not seem to have called the number to find out what position HMRC currently adopt or to have done anything about trying to reach an accommodation with HMRC. There is nothing to suggest that, if HMRC became aware of the Decision Notice, this would cause them to behave any differently. If they read the Decision Notice, they would see that it had been challenged and was therefore to some extent provisional. There is no reason why HMRC, a sophisticated creditor, would overreact to the Decision Notice in the way that the Applicant suggests.

18. Mr Knight says that HMRC must already know of the Applicant's plight. Mr Maddison told them that its income stream was precarious and he has offered to pay them £2,000 a month against a debt in excess of £180,000. Against that background, it is unlikely that simply seeing a challenged Decision Notice would cause HMRC to take a different attitude to the Applicant. The suggestion that HMRC have significantly de-escalated their approach to the applicant, and that this approach would change following publication of the Decision Notice is pure speculation.

Commercial counterparties/debtors

19. Mr Maddison explained that the Applicant does have some business at the moment, working with some appointed representatives. In its Reply (the "**Reply**") to the Authority's Statement of Case, the Applicant said that its "active regulated activities consist of: (a) credit broking through a website; and (b) administering a small number of Debt Respite Scheme (Breathing Space) moratoria". Mr Maddison wants the Applicant to earn money so that it can pay its creditors.

20. Contrary to his original submission, Mr Maddison accepts that the Applicant is not party to any contracts with counterparties who are able to terminate their contract because of an adverse ruling by the Authority. Nevertheless, he says that publication of the Decision Notice will have an adverse impact on the Applicant's reputation and may cause firms to walk away from the Applicant and refuse to do business with it.

21. Mr Kingham accepts that that is a possibility, but the required threshold is that the Applicant has produced cogent evidence to demonstrate a significant likelihood of material commercial harm and this is just not the case here.

22. Mr Maddison suggested that counterparties who owed the Applicant money might foresee that the Decision Notice would cause the Applicant difficulty and use that as an excuse for not paying amounts owed to it in the hope that the Applicant would go out of business before it needed to pay. The Applicant would then be in a position of needing to resolve issues with counterparties, rather than dealing with the substance of the Reference.

23. Mr Maddison explained that there is a material debt owed by a third party that the applicant is looking to collect. This debt was uncovered during the Applicant winding down its relationship with another insolvency practitioner. Essentially, the Applicant says that the debtor calculated the amount due to the Applicant under a contract on an incorrect basis which resulted in it underpaying the

Applicant. The Applicant had sent a letter before action to the debtor, and it exhibited a copy of this letter (with the identity of the debtor redacted). The debtor was given until 26 March 2026 to reply but does not appear to have done so.

24. Mr Maddison is afraid that, if it becomes aware of the Authority's actions, the debtor will not settle the debt and will simply play for time in the hope that the Applicant would go into liquidation and disappear taking the debt with it.

25. Mr Kingham says that, although the applicant has given some explanation of this debt, there is no evidence about whether the debt is contested. The Applicant suggests that publishing the Decision Notice would make the debtor walk away, but there is no evidence that the debt is accepted or whether publication of the Decision Notice would cause the debtor to behave in this way.

Consumer harm

26. Part of the Applicant's business involves acting as a debt adviser in relation to the Beathing Space debt respite scheme (the "**Scheme**"). This is a statutory scheme which gives debtors temporary protection from their creditors while they get debt advice and make a plan. Mr Kingham explained that debt advisers act as a gateway to the Scheme. Once a moratorium is formally recorded on the Scheme register, the debtor benefits from protection as a matter of law. Protection under the Scheme does not depend on any firm continuing to trade, nor is the insolvency of a debt adviser a matter which may result in cancellation of a moratorium.

27. The Authority says that, at most, closure of the Applicant's business could give rise to disruption for cases not yet registered with the Scheme or requiring midway review. However, the Applicant has failed to provide any evidence demonstrating why consumers would not be able to apply for through other debt advisers or why it would lead to "significant time delays in receiving new protections". The Applicant's assertions about customer harm overstate the logistical difficulties for consumers in accessing the Scheme.

28. Mr Kingham says that this consumer harm is concerned could only arise if the Applicant is tipped into insolvency because of the publication of the Decision Notice. As the Applicant has not demonstrated a significant likelihood of this happening, then consumer harm can be ignored.

29. In its Reply, the Applicant stated (at [120]) that if it "were to cease trading, whether voluntarily, through an HMRC winding-up petition, or through any other mechanism, the process would be supervised by a licensed insolvency practitioner. That is, by definition, a structured and legally governed process. The IP would notify creditors, realise assets (including the £13,000 UIL receivable), distribute proceeds in statutory order and close the company. Nothing in that process harms consumers, because there are no consumer financial arrangements in progress, no client money in transit, and no pending consumer obligations the cessation of which would leave a consumer worse off than if they had never engaged with [the Applicant]."

30. Mr Maddison accepts in the hearing that customers would still be able to benefit from the Scheme if the Applicant ceased to carry on business. There is also a statement to that effect in the Reply at [118]. However, he says that the Applicant performs an important role in working with insolvency practitioners, who are unable to access the Scheme on their own, and it helps their customers. The Applicant operates in an unconflicted position. If it were not there, these practitioners and their clients would need to go to competitors.

Public knowledge of the Applicant's position

31. Mr Maddison says that the Applicant's financial circumstances are already a matter of public record at Companies House. Publication of the Decision Notice therefore serves no protective purpose. A privacy direction would not shield the Applicant from market consequences arising from creditors acting on information they already hold. If HMRC determines, based on information already available to it, to pursue winding-up proceedings, that is a creditor acting on its existing assessment of the position.

32. Mr Kingham says that regulatory transparency serves a distinct and important public function. Information available from Companies House does not contain the Authority's findings or the nature of the failings identified. The fact that certain financial information is publicly accessible elsewhere does not render publication of the Decision Notice redundant.

33. Mr Kingham says that the Decision Notice would include prominent statements that the Decision Notice has been referred to this Tribunal. It will be clear that the Applicant does not accept the Decision Notice and is seeking to challenge it.

34. He also says that harm to the Applicant's reputation from the Authority's action may be remedied by succeeding in its Reference. There is no basis for the Applicant's assertion that reputational harm would not be capable of being remedied even if the Applicant ultimately succeeds in the Reference, nor has any evidence been provided to demonstrate this

Challenges to the Decision Notice

35. Mr Maddison says that the Decision Notice is under substantive challenge on a large number of grounds. For example, the Applicant says that the Decision Notice does not identify any actual consumer detriment arising from the Applicant's activities. Secondly, it says that COND 2.4 requires an assessment of whether a firm's resources are appropriate having regard to the regulated activities carried on or sought to be carried on, but the Decision Notice does not analyse the nature, scale, or risk profile of the Applicant's actual activities, nor does it explain why the Applicant's resources are inadequate for those activities. The Applicant criticises the Decision Notice for relying predominantly on historic financial information and not considering material changes since June 2025. Also, it says, the Authority does not explain why cancellation was necessary or proportionate. The Authority is criticised for misapplying a regulatory definition material to its assessment of the Applicant's resources, without analysing the Applicant's actual activities or establishing that the relevant definitional threshold is met. There are other criticisms; these just give a flavour of the Applicant's position.

DISCUSSION

36. As discussed above, the starting point must be the principle of open justice, and with it the statutory presumption that decision notices will be published. That presumption advances the public interest in transparency and open justice. In considering whether a decision notice should be published, the Authority does not also need to demonstrate that there are additional public interests at play, such as increasing consumer knowledge or consumer protection. There is a public interest in promoting transparency in the UK financial services sector: if a person wishes to participate in the industry, then they must accept this.

37. For the Privacy Applications to succeed, the Applicant must establish by cogent evidence that publication of the Decision Notice would cause serious harm or have another result which would otherwise make it unfair to publish.

38. An unevidenced assertion by an applicant of unfairness in publishing a decision notice is unlikely to be sufficient. In contrast, it would likely be unfair to publish a decision notice where this would result in the destruction of, or severe damage to, a person's livelihood.

39. The embarrassment or general reputational harm to an applicant that could result from publicity, that it might lead to people asking questions or voicing criticisms which the applicant would rather not answer, does not amount to unfairness.

40. Mr Maddison says that the publication of the Decision Notice would likely cause creditors to take action against the Applicant including trying to put it into liquidation or take other steps which could not be unwound were the Reference to be successful.

41. We examined the position of one very large creditor, HMRC. At one point, HMRC had threatened to put the Applicant into liquidation, but now seem to have stepped back from that position. Mr Maddison says that they would be likely to go back to trying to liquidate the Applicant if they knew about the Decision Notice. There is no evidence about this at all. We know that HMRC are owed a very large amount of money and that the Applicant has made a number of proposals for payment which HMRC have rejected or (in the case of the most recent proposal) seemingly not addressed.

42. In the autumn of last year there was an exchange of correspondence between the Applicant and HMRC, but this seems to have ground to a halt in October, and we do not know what HMRC's current attitude to the Applicant is, let alone whether this would change if they knew of the Decision Notice.

43. As we discussed in the hearing, HMRC are a sophisticated creditor and they would know, if they looked at the Decision Notice, that it had been challenged. Publication of the Decision Notice would identify a risk that the Applicant might be unable to carry on regulated activities permanently, but that is not a definite outcome as the Decision Notice has been challenged.

44. The Applicant did not produce any evidence as to what its business would look like (how extensive/profitable it would be) if it lost its authorisation, so we do not know whether publication of the Decision Notice would act as a warning that the Applicant's (already very weak – it owes HMRC more than £180,000 but has offered to pay them only £2,000 a month for now) financial position was at high risk of deteriorating materially in a way that might "tip HMRC over the edge". The Applicant did not explain why HMRC would be likely to conclude that they would be better off trying to put the Applicant into liquidation now rather than waiting to see what happens with the Reference. Indeed, in one of the letters he exhibited, Mr Maddison told HMRC that they would not get anything if the Applicant was liquidated, so it is hard to see what incentive there would be for HMRC in going down this track.

45. The Authority is a material creditor of the Applicant in respect to the Costs Order, but it can be safely assumed that the Authority would understand the contingent nature of a challenge to the Decision Notice, and the Applicant did not suggest that the Authority's position would change as a result of publication.

46. We were not told of any other creditors' attitude to the Applicant (for example, the lender under the Bounce Back loan) and whether there is any risk of their attitude being affected by publication of the Decision Notice.

47. Moving on to commercial counterparties and debtors, Mr Maddison says that, if the Decision Notice were published, it is possible that one or more commercial counterparties might cease to deal with the Applicant, but he has not told us anything about any of these commercial counterparties or explained why the publication of the Decision Notice would make them likely to walk away from the Applicant.

48. When discussing consumer harm, Mr Maddison told us that the Applicant is a useful service provider in relation to the Scheme because it can help insolvency practitioners which have clients they might otherwise need to refer their clients to competitors. There was no suggestion that the Applicant would be unable to carry on doing this if the Decision Notice was published and, if it is providing an important commercial service for insolvency practitioners, there is no reason to think that they would stop using the Applicant just because they got to know about the Decision Notice. All of this, of course, is pure speculation because Mr Maddison has not told us anything about any of the Applicant's commercial counterparties.

49. Nor has he told us anything about the company's debtors. He suggested that, if they find out about the Decision Notice, they might drag their feet when it comes to paying what they owe to the Applicant because they might hope that the company would go into liquidation and disappear taking their debts with it. That might not be a very rational thing for them to think. As the Applicant said in the Reply, if the Applicant goes into insolvent liquidation, a liquidator will take charge of the company and its affairs and seek to collect its debts. It would be irrational for a debtor to think that, if the Applicant goes into insolvent liquidation, particularly owing HMRC such a large amount of money, any liquidator would simply shrug his shoulders and write off their debt.

50. We were told of the existence of a particular large debtor, but we were not told its identity or whether, regardless of the Decision Notice and the issues we are concerned with, that debt is challenged. We do know that (at least at the time of the hearing, so without publication of the Decision Notice) the debtor had not replied to the Applicant's letter before action.

51. Pausing here, reflecting on the Applicant's commercial counterparties, debtors and creditors, whilst Mr Maddison might be right to say that it is possible that creditors might seek to enforce their debt more vigorously if they knew of the Decision Notice, commercial counterparties might seek to take their business elsewhere and debtors might try to take advantage of the Applicant's position to avoid paying, the Applicant has not produced any evidence (let alone any cogent evidence) that there is a significant likelihood of this happening with consequences that would make it unfair to publish the Decision Notice.

52. Similarly, with consumer harm, Mr Maddison accepts that, to the extent the Applicant is providing assistance in relation to the Scheme, a debtor who has a moratorium would not be affected by the Applicant ceasing to carry on business. At most, there would be commercial inconvenience for insolvency practitioners who use the Applicant as an unconflicted service provider and some disruption for individuals seeking a moratorium. In this context, I note that in the Reply the Applicant said that it only provided administration in relation to a small number of cases.

53. Unfairness to people other than the Applicant is a relevant factor when it comes to the Privacy Applications, but again we have no material evidence from Mr Maddison that serious harm would be visited on consumers if the Decision Notice were published. If the Applicant ceases to carry on

business (and, as discussed, there is no evidence that publication of the Decision Notice creates a significant likelihood of this), there may be some inconvenience to insolvency practitioners who have to find someone else to provide the services that the Applicant is and some disruption for a potentially small number of individuals in the process of getting a moratorium, but nothing more than that.

54. Mr Maddison clearly feels very strongly about the circumstances which have brought the Applicant to the position it is in. The Authority is seeking to withdraw the Applicant's permissions on the basis that it has inadequate financial resources, but that inadequacy is, in Mr Maddison's view, to be laid squarely at the door of the Authority, because their policy changes effectively destroyed a significant part of the Applicant's business.

55. The Applicant has made a very large number of challenges to the Decision Notice. The merits of the Reference, and whether Mr Maddison is right to feel aggrieved at the Applicant's treatment by the Authority, are not matters which are relevant to the Privacy Applications. If the Reference is successful and Mr Maddison's position is vindicated, that would take away any negativity that arises because of the publication of the Decision Notice.

56. The Decision Notice does not accuse the Applicant of dishonest, reckless or negligent behaviour, simply of having inadequate funds available. The financial plight of the Applicant is, of course, already visible from Companies House and would be something a creditor or potential business partner could discover by looking at Companies House or making enquiries of the Applicant. The Decision Notice is not going to tell people anything that they cannot already easily find out for themselves. That militates in favour of publication of the Decision Notice, as does regulatory transparency. I agree with Mr Kingham that it is important that, where the Authority has reached a regulatory conclusion, that conclusion is publicly available. The exception would be where that conclusion is challenged and material harm would result from publishing the conclusion before the challenge had been resolved.

57. For all the reasons I have just explained, the Applicant has failed to show that publication of the Decision Notice would cause the destruction of its business or some other harm that would make it unfair to publish.

58. For these reasons I dismiss the Privacy Applications.

UPPER TRIBUNAL JUDGE MARK BALDWIN

RELEASE DATE: 22 June 2026