UT Neutral citation number: [2026] UKUT 00288 (TCC)

UT (Tax & Chancery) Case Number: UT-2025-000126

Upper Tribunal
(Tax and Chancery Chamber)

At the Rolls Building, London

FINANCIAL SERVICES – Decision Notice – Notice of Discontinuance – Costs application of £1.1m – whether Decision Notice was unreasonable – whether the Authority acted unreasonably in defending or conducting the proceedings – whether schedule of costs claimed was compliant – whether the Tribunal should exercise its discretion to award costs – application refused.

Heard on 10 July 2026
Judgment given on: 30 July 2026

Before

DEPUTY UPPER TRIBUNAL JUDGE ANNE REDSTON

Between

BRICEAMERY CAPITAL LTD

Applicant

and

THE FINANCIAL CONDUCT AUTHORITY

Respondent

Representation:

For the Applicant: Mr Nazzim Ishaque, director of the Applicant.

For the Respondent: Mr Theodor van Sante of Counsel, instructed by the Financial Conduct Authority

DECISION

SUMMARY

1. On 19 May 2026, BriceAmery Capital Ltd ("BCL") filed and served an application ("the Application") for the Tribunal to award costs of £1,122,067 against the Financial Conduct Authority ("the Authority"). The background to the Application is summarised in the following paragraphs.

2. On 27 March 2023, the Financial Ombudsman Service ("FOS") issued a final decision in favour of a person I have anonymised[1] as Mr A ("the FOS Award"). The FOS Award was made on the basis that BCL had received £55,000 from Mr A in 2014, of which £50,000 was to be invested and £5,000 was fees. FOS decided that BCL had failed to manage Mr A's investment or provide statements for a period of years, and required BCL to return the money plus interest, and pay compensation. BCL did not comply with the FOS Award, because it considered that the person who had complained to FOS ("the Complainant") was not Mr A, but a Mr B, and his claim was fraudulent.

3. On 18 November 2025, the Authority issued a decision notice (the "Decision Notice") cancelling BCL's Part 4A permission to carry on regulated activities pursuant to s 55J(2) of the Financial Services and Markets Act 2000 ("FSMA"). The Decision Notice was issued because BCL had not complied with the FOS Award. On 25 November 2025, the Applicant referred the Decision Notice to the Upper Tribunal ("the Reference" and "the Tribunal" respectively).

4. On 11 March 2026, the Authority held a video call with the Complainant, as a preliminary to him providing a witness statement for the Tribunal proceedings. The image of the Complainant as seen on the video screen was more closely aligned with that of Mr B than with that of Mr A. The Authority subsequently decided that there was a compelling case that the FOS Award had been procured by identity fraud, in other words, by Mr B pretending to be Mr A.

5. On 14 April 2026, the Authority issued a Notice of Discontinuance under FSMA s 389(1) and on 28 April 2026, a notice withdrawing its case at the Tribunal ("the Withdrawal Notice") pursuant to Rule 17(1)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Tribunal Rules").

6. On behalf of BCL, Mr Ishaque applied for indemnity costs on the basis that the issuance of the Decision Notice had been unreasonable, and because the Authority had acted unreasonably in "defending or conducting the proceedings".

7. For the reasons set out below, I find (a) that the issuance of the Decision Notice was not unreasonable, and (b) the Authority did not act unreasonably in "defending or conducting the proceedings". Even had I found that either of those requirements was satisfied, I would not have awarded costs, for the reasons explained at §95-§107 and §108-§114.

THE STATUTORY PROVISIONS AND THE RULES

8. Section 29 of the Tribunals, Courts and Enforcement Act 2007 ("the TCEA") provides, so far as relevant:

> "(1) The costs of and incidental to—
>
> (a) all proceedings in the First-tier Tribunal, and

[1] I have anonymised those who were not parties or witnesses and were thus not able to challenge the evidence and submissions put forward by BCL and of the Authority as to what had occurred

> (b) all proceedings in the Upper Tribunal,
>
> shall be in the discretion of the Tribunal in which the proceedings take place.
>
> (2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.
>
> (3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules."

9. The Tribunal thus has a discretion to award costs, but its exercise of that discretion is limited by the Tribunal Rules. Rule 10(3) provides, so far as material:

> "…the Upper Tribunal may not make an order in respect of costs or expenses except–
>
> (a)-(c)…
>
> (d) if the Upper Tribunal considers that a party…has acted unreasonably in bringing, defending or conducting the proceedings;
>
> (e) if, in a financial services case…the Upper Tribunal considers that the decision in respect of which the reference was made was unreasonable."

10. Rule 10(5) provides:

> "A person making an application for an order for costs or expenses must—
>
> (a) send or deliver a written application to the Upper Tribunal and to the person against whom it is proposed that the order be made; and
>
> (b) send or deliver with the application a schedule of the costs or expenses claimed sufficient to allow summary assessment of such costs or expenses by the Upper Tribunal."

THE WITNESS EVIDENCE

11. After the Authority had discontinued, Mr Ishaque made several applications to the Tribunal. At a case management hearing I explained the Tribunal's jurisdiction and gave directions for BCL's costs application. Those directions did not refer to the filing of witness statements, as witness evidence is rare in costs application hearings. However, Mr Ishaque filed and served a witness statement on 15 May 2026 in support of the Application. On 26 June 2026, the Authority filed and served a witness statement from Mr Jeremy Parkinson of the Authority in response; this ran to 207 paragraphs and attached 179 exhibits. BCL filed and served a second witness statement from Mr Ishaque on 28 June 2026.

12. Mr Parkinson's witness statement included his analysis of the reasons why Mr Ishaque knew the Complainant was a fraud, namely that BCL, Mr A and Mr B were involved in an arrangement, the purpose of which was to deceive a government department ("the Arrangement"). Mr Parkinson's analysis was supported by various exhibits; Mr van Sante's skeleton repeated that analysis by reference to both the witness statement and the exhibits.

13. At the beginning of the costs hearing, I asked the parties how they proposed to deal with the witnesses. I was informed by Mr van Sante that Mr Parkinson was not present, because the Authority considered this was unnecessary given that this was an application hearing and not a trial.

14. I told the parties that as Mr Parkinson was not available to be cross-examined, it was not in the interests of justice for me to rely on his witness statement, other than in relation to a small number of points which were not in dispute. I also said I would make no findings about the Arrangement, because (a) those findings were not necessary in order to determine the Application, and (b) it raises wider issues, about which it is not appropriate to make findings

following a hearing listed to decide a costs application. Mr van Sante said he would therefore proceed only by reference to the documentary evidence.

15. As regards Mr Ishaque's witness statements, he was present and could therefore be cross-examined. However, his first statement essentially provided an explanation of the basis on which the Application had been made, and his second set out a summary of facts, followed by the passage set out at §109. The latter was accepted by the Authority, so cross-examination was not necessary.

FINDINGS OF FACT

16. The findings of fact are therefore made on the basis of the documents in the Bundles provided for the hearing and Mr Ishaque's evidence. I make a further finding of fact at §112 about statements made to the Authority by Mr Ishaque.

The FOS decision

17. BCL is a small company with four employees; Mr Ishaque is the only fee-earner. He and Ms Azra Hussain are the directors and shareholders.

18. On 4 September 2020, FOS received a complaint from the Complainant who said he was Mr A. He told FOS that in 2014 he had invested £50,000 into a fund which BCL was to manage; he also paid a fee of £5,000. The funds were said to have been invested in a company owned by Mr B; the company has been anonymised as X Ltd.

19. Mr Ishaque told FOS that the investment had been arranged by a third party, and said BCL had no ongoing obligations to Mr A. He did not state that he considered the Complainant to be acting fraudulently.

20. On 27 March 2023, FOS upheld the complaint and ordered BCL to pay the Complainant the investment and the fee; a sum to represent the investment growth, and £250 "for the trouble, upset and inconvenience" caused to the Complainant.

21. The only way to challenge a FOS award is via a judicial review ("JR"). On 30 May 2023, BCL sent FOS a JR pre-action letter, which included the statement, in bold, that the actions of the Complainant were "suspicious and raises the suspicion of Fraud".

The Authority and the JRs

22. In January 2024, FOS contacted the Authority, stating that BCL had failed to pay the FOS award. FOS provided the Authority with a copy of the FOS Award together with communications between the FOS and BCL beginning on 30 May 2023 and ending with an email dated 17 January 2024 which began by saying "Mr [A] is a fraud".

23. On 7 May 2024, a call took place between the Authority and Mr Ishaque, during which Mr Ishaque reiterated that the Complainant was acting fraudulently. When asked about BCL's own activities, Mr Ishaque said "until somebody wants us to transact, only things in the pipeline. Currently there isn't any work".

24. On 15 May 2024, the Authority's Supervision department ("Supervision") wrote to BCL noting that it had failed to comply with the FOS Award, and adding: "During our meeting you advised us that you will not comply with the decision and that you did not seek judicial review". Supervision said BCL was failing to comply with Principle 6 of the Authority's Dispute Resolution Guidance set out at DISP 3.7.12R, and with the Suitability Threshold Condition at FSMA Sch 6 para 2E, namely that a person be "fit and proper having regard to all the circumstances". The Authority said that if BCL did not confirm that it would comply with the FOS Decision, the matter might be referred to its Enforcement division ("Enforcement"), which would probably recommend action to prevent BCL from conducting regulated business.

25. On 23 May 2024, Mr Ishaque told the Authority that BCL would make a JR claim in relation to the FOS Award, and Supervision therefore suspended the proposed transfer to Enforcement. No JR claim was made, and the case was referred to Enforcement in September 2024.

26. Having been informed of that transfer, on 30 September 2024 BCL sent FOS an updated pre-action protocol letter, and the Authority suspended further action pending the outcome of those legal proceedings.

27. On 11 February 2025, the High Court (Michael Ford KC) refused BCL permission to bring its JR claim, which he certified as being "totally without merit". His refusal decision includes this paragraph:

> "The allegation in ground 2 is that the Defendant did not consider the possibility that the [Complainant] 'maybe' committed fraud against the Claimant, rendering the decision irrational. However, the Defendant was not required to address every possibility in reaching its decision. The letter shows it considered carefully the arguments raised by the parties, including by those of the Claimant. Nothing suggests unfairness or public law irrationality."

28. Having considered that decision, on 8 July 2025 the Authority issued BCL with a Warning Notice and supporting documentation.

29. On 15 May 2025, a "Share and Purchase Deed" ("the Deed") was executed, transferring ownership of BCL from Mr Ishaque and Ms Hussain to a Mr Adam Neal. A sum of £30,250 was paid by Mr Neal on that date, with two further instalments of £272,500 to be paid when the FCA approved the change of control, followed by a further £302,500. So far as I was able to establish from the Deed, no "completion date" was given, but the term "longstop date" is defined as 31 December 2026 "or such other date as the parties may from time to time agree". On 5 August 2025, Mr Neal asked the Complainant to provide ID documents; I return to this at §33 below.

30. On 26 August 2025, BCL informed the Authority that it had filed a Suspicious Activity Report ("SAR") with the National Crime Agency ("NCA"), on the basis that paying the FOS Award "could amount to a criminal offence" because the funds constituted "criminal property" under the Proceeds of Crime Act 2002 ("POCA"). The Authority paused further action while BCL communicated with the NCA. BCL subsequently filed two further SARs. The NCA determined that the FOS Award was not criminal property, and that BCL was not thereby prevented from paying the Complainant.

31. In his communications with FOS and his subsequent communications with the Authority, Mr Ishaque relied on the following as supporting the allegation of fraud:

(1) Mr B and Mr A lived at the same London address in 2014.

(2) The Complainant did not use the same email address as Mr A had used in 2014.

(3) Mr A had not contacted BCL at any point since 2014.

(4) X Ltd (the company owned by Mr B, into which the original investment had been made in 2014) had been struck off the register at around the same time as the complaint had been made to FOS.

(5) The Complainant did not provide ID documentation when requested.

32. Mr Ishaque repeated his statement about the lack of ID documentation on numerous occasions, summarising the position as follows "No passport, no proof of address, no bank statement - nothing was ever provided". In addition, on 11 September 2025, Mr Ishaque told the Authority that BCL could not complete customer due diligence under the Money

Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 because the Complainant had refused to provide identity evidence.

33. In the light of BCL's assertions that the Complainant was refusing to provide the required ID documentation, Enforcement contacted FOS on 17 September 2025 to ask it to engage with the Complainant to make further enquiries, and FOS agreed.

34. On 18 September, FOS told the Authority that it had contacted the Complainant, who said he had provided ID documents to BCL on more than one occasion. His email to FOS read:

> "I actually did KYC upon his request several times. However, each time I did KYC, he did not do any further process after that. If I remembered it right, this happened at least three times so far since the Financial Ombudsmen made the final decision.
>
> And all of a sudden, without my additional request, a man called Adam Neal contacted me recently. He said he is from the 'FCA Authorisations'. As the name suggested, I thought he was from the real FCA. I was really happy the FCA finally stepped into this matter and resolved it.
>
> I sent the KYC documentation to Adam as requested. However, Adam then asked me to do some 3rd party biometric data submission, which made me feel very weird and strange. After internet searching, I found that the man Adam Neal was actually NOT from the real FCA. The name of the "FCA Authorisation" was only a trading name of his private company…
>
> I thought it was not the right thing to do if anybody else, except Nazzim or BriceAmery, could ask my KYC, because I was not Adam's customer. So I asked him about this, and he said his firm wanted to buy out Nazzim's BriceAmery and pay his debt before he buys BriceAmery. I replied to Adam that I only want to do KYC to Nazzim or BriceAmery, not to the 3rd party, especially if there is sensitive biometric data. A company buying out between them is certainly not a part of my business after all.
>
> Adam replied to me that he would then leave the issue between me and Nazzim to be resolved again. Adam never contacted me again since then."

35. On 18 November 2025, the Authority issued the Decision Notice, cancelling BCL's Part 4A permission to carry on regulated activities. The reasons were summarised as follows:

> "…the Firm is failing to satisfy the Suitability Threshold Condition, in that the Firm is not a fit and proper person to conduct regulated activities having regard to all the circumstances. Specifically, the Firm has failed to comply with an award made by the Financial Ombudsman Service against it. The Firm has therefore breached DISP 3.7.12R and Principle 6 (Consumers' interests) and is failing to ensure its affairs are conducted in an appropriate manner, having regard to the interests of consumers."

36. On 25 November 2025, BCL made the Reference and a second JR claim. Permission for the latter was subsequently refused by Alison Morgan KC on 12 March 2026 and the claim was certified as totally without merit.

The Authority's contacts with the Complainant

37. On 2 March 2026, the Complainant sent the Authority copies of the following:

(1) emails between him and BCL dated 20 February 2024. These showed that on that date, he had sent BCL copies of a passport in the name of Mr A, together with bank statements from the account from which Mr A had paid the money to BCL in 2014; and

(2) an email dated 22 February 2024 attaching a bank statement in Mr A's name showing the address at which Mr A had lived in 2014.

38. Those documents thus contradicted BCL's repeated statements that no KYC had been received from the Complainant. I return to this issue at §108ff below.

39. On 11 March 2026, a video call took place between the Authority and the Complainant. The Authority's contemporaneous note of that call records that the Complainant said "Mr [B] is definitely him. Not a different person. He used the name for gaming". The Authority explained to the Complainant that it needed to take a screenshot because BCL was saying the Complainant was a "fraudster improperly trying to get money, so it's important to have evidence of his identity", and the Complainant consented.

40. The Authority subsequently considered the screenshot and summarised the position as follows:

> "Screenshot taken during the meeting between Enforcement and an individual purporting to be Mr [A], which appears to show Mr [B] at an older age and with a heavier appearance and is more closely aligned with the individual depicted in Mr [B's] passport photo than with the individual in Mr [A's] passport photo."

41. On 13 March 2026, the Authority asked the Complainant further questions, including:

> "…whether you would you be willing to have a copy of your passport certified as a true copy and a photo of you certified as a true likeness by a lawyer in [your country]. The certified copies would then need to be posted to us by the lawyer."

42. No reply was received to that email, or to two chaser emails sent on 16 and 20 March 2026. As Mr van Sante put it:

> "The evidence taken together established a compelling case that the FOS Award was procured by identity fraud – specifically, by a person (most likely Mr [B]) fraudulently impersonating the true Mr [A]."

The Notices of Discontinuance and Withdrawal

43. On 14 April 2026, the Authority issued a Notice of Discontinuance, which said:

> "Following further information coming to light since the Firm referred the case to the Upper Tribunal, the Authority has decided not to take the action proposed in the Decision Notice."

44. The covering letter included these passages:

> "Following the Firm's referral of the Decision Notice to the Upper Tribunal, [the Complainant] contacted the Authority to discuss the Financial Ombudsman Award…and we engaged with him to obtain a witness statement for use in proceedings. As part of that engagement, [the Complainant] provided the Authority with information and also noted that he uses the name [B]. The Authority has a copy of Mr [B's] passport, and the passport photo is not of Mr [A]. The Authority sought further clarification from [the Complainant] on more than one occasion. However, [the Complainant] has failed to engage further with the Authority and therefore also appears unwilling to provide any clarification or a witness statement.
>
> In light of these circumstances and the lack of continued engagement from [the Complainant], the Authority does not consider it is able to continue enforcement action against the Firm for the non-payment of the FOS award."

45. On 28 April 2026, the Authority issued the Withdrawal Notice. On 24 June 2026, Falk LJ refused BCL permission to appeal against Judge Morgan's decision, noting that it was "misguided", "has no real prospect of success" and that "[n]othing is pointed to that indicates that FOS were obliged to verify the identity of the complainant before reaching its decision".

THE APPLICATION

46. The Application was set out in the following documents:

(1) the costs schedule ("the Schedule"), which covered eight "Strands" of the Application over 48 pages;

(2) a "Statement of Case" explaining the eight "Strands" of the Application; this was 80 pages long;

(3) a seven page witness statement from Mr Ishaque with 136 pages of exhibits;

(4) a chronology of events (25 pages); and

(5) an "unreasonable conduct schedule" with 11 grounds over 28 pages.

47. The Strands of the Application were headed as follows:

(1) FCA Enforcement: this covers the period from Supervision's first contact with Mr Ishaque until 23 May 2024, when Mr Ishaque told the Authority BCL was making a JR claim. This Strand totalled 119.5 hours

(2) First Judicial Review: this totals 301.25 hours.

(3) Warning Notice to Decision Notice: this totals 400.25 hours.

(4) Second Judicial Review: this totals 215 hours.

(5) Upper Tribunal: this covers the period from the Reference to the case management hearing on 30 April 2026 and totals 727.5 hours.

(6) Court of Appeal: this totals 284.75 hours.

(7) Cross Strand work: this includes the following: Legal consultations with lawyers which BCL either did not instruct, or which withdrew once instructed; Mr Ishaque's and Mr Neal's witness statements; preparation of a bundle for the hearing listed for 30 April 2026; preparation of skeleton arguments; some FOS-related matters; legal research, and "bundle management". It totals 372 hours.

(8) The Application and preparation for the costs hearing, together with estimated attendance costs and post-hearing costs: this totals 377.16 hours.

48. The overall total is 2,797.16 hours at an hourly rate of £386. The cost claimed is £1,122,067, which includes disbursements for court fees. I return later in this decision to the hourly rate and the time spent.

THE COSTS RELATING TO THE JRS AND THE COURT OF APPEAL

49. The Tribunal can only make a costs award if the requirements of Rule 10(3)(d) and/or Rule 10(3)(e) are satisfied. As I explained to Mr Ishaque at the case management hearing, and reiterated in the directions subsequently issued, I have no jurisdiction to make an award of costs incurred in the JR proceedings or in the Court of Appeal proceedings.

50. Mr Ishaque nevertheless included Strands 2, 4 and 6 in the Application, as well as some related costs in Strand 7. He justified including the costs relating to BCL's first JR as follows:

> "All costs in this strand flow directly from the FCA's unreasonable conduct.
> The FCA directed BriceAmery to pursue JR as 'the remedy available'…despite

> being on notice that JR against the FOS was unavailable — confirmed in writing by the FOS itself on 25 Sep 2024: BriceAmery was 'over a year out of time.' The costs of this strand are recoverable from the FCA on the causation principle..: without the FCA's binary enforcement ultimatum, no JR would have been brought."

51. Mr Ishaque used the term "binary enforcement ultimatum" or "binary ultimatum" to reflect what he submitted were the two choices given to BCL by the Authority: namely to pursue JR or to pay the FOS Award. The binary ultimatum is said to have arisen from a letter sent to BCL on 23 May 2024, which read:

> "We note from your letter dated 22 May 2024 that BriceAmery Capital Ltd has requested from the FCA a detailed response to address the points raised in your letter dated 16 May 2024. The questions you set out in your letter of 16 May 2024, are factors for the Firm to consider in deciding whether to initiate Judicial Review proceedings, which is the remedy available to the Firm if it disagrees with an award from the Financial Ombudsman Service. However, if the Firm does not wish to take such action or has not pursued such action till date, then from the FCA's perspective, it is required under DISP 3.7.12 to comply promptly with the award."

52. All the Authority was doing in that passage was setting out the legal position, namely that it was for BCL to decide whether to commence JR, but if it did not do so, it was required to comply with the FOS Award. The Authority did not cause BCL to incur the costs of the JR proceedings, and the Tribunal does not have the jurisdiction to award BCL those costs. The position is essentially the same for the second JR and the Court of Appeal proceedings.

WHETHER THE DECISION NOTICE WAS UNREASONABLE

53. The first issue is whether "the decision in respect of which the reference was made was unreasonable", see Rule 10(3)(e). I first summarise the case law, and then consider the submissions of the parties.

The case law

54. In *Baldwin v FSA* (5 April 2006), the Financial Services and Markets Tribunal ("FSMT"), the Tribunal's predecessor, said at [8]:

> "…judging whether something is reasonable or unreasonable is wholly distinct from judging whether it is right or wrong: a decision may be wrong without being in the slightest degree unreasonable."

55. At [15] the FSMT said:

> "We are required to focus on the decision itself. In our judgment the right approach is to ask ourselves whether we consider that the Authority's decision was unreasonable, given the facts and circumstances which were known or ought to have been known to the FSA at the time when the decision was made."

56. The Tribunal later endorsed those passages, see *Burns v FCA* [2019] UKUT 0019 (TCC) at paras [17]-[20].

Mr Ishaque's submissions on behalf of BCL

57. Mr Ishaque's case was that the Authority had acted unreasonably because it should have "performed the most basic identity check on the Complainant at the outset" and had it done so "its enforcement action would have collapsed in 32 days rather than 32 months". He emphasised that BCL had pressed the same point "since May 2024", being the date on which the initial call took place between Mr Ishaque and the Authority. In his words:

> "The basic regulatory step – at the least, to ask the identity questions the FCA itself later asked, and which, once asked, resolved the matter within weeks …was not taken; instead, the FCA compelled payment to the unverified payee and cancelled the Applicant's permission. A regulator that supervises the anti-money-laundering regime, and is told by a firm that it has an open SAR and an unresolved identity question about a payee, does not act within the reasonable range by setting the concern aside and compelling the payment regardless."

58. In his "unreasonable conduct schedule", Mr Ishaque said:

> "Reckless reliance on known fraudster evidence, after being put on notice, is unreasonable conduct of the highest order."

59. Mr Ishaque put forward a number of other grounds which he identified as relating to Rule 10(3)(d), but which instead relate to Rule 10(3)(e), and I have considered them under that heading. Mr Ishaque also made submissions about how the Authority behaved in the period leading up to the issuance of the Decision Notice, and I return to that issue at §65.

Mr van Sante's submissions on behalf of the Authority

60. Mr van Sante began by accepting on behalf of the Authority that the FOS Award was void *ab initio* because it had been procured by fraud, and that the Decision Notice was therefore wrong. However, in reliance on the above case law, he said that this is not the test.

61. He submitted that issuing the Decision Notice was not unreasonable for the following reasons:

(1) FOS had determined the complaint in favour of the Complainant. FOS is not supervised by the Authority, and the Authority has no jurisdiction to change or challenge its decisions. It was, said Mr van Sante, not the Authority's role to interfere in the FOS process and separately investigate BCL's allegations of fraud.

(2) A challenge to a FOS award has to be brought by JR. By the time of the Decision Notice, the High Court had dismissed BCL's claim as "totally without merit", and it was "not unreasonable for the Authority to defer to the FOS and the courts".

(3) BCL had submitted the SARs on the basis that the FOS Award had been obtained by fraud, but the NCA had determined that it was not "criminal property" and held that there was no related legal impediment to BCL paying the Complainant. It was reasonable for the Authority to take that into account.

(4) Although BCL had repeatedly told the Authority it suspected fraud, the basis for its suspicions were the use of a different email address; the gap in communications since 2014 and the failure to provide ID documents, but none of those grounds had convinced the High Court.

(5) The Authority did ask FOS to contact the Complainant in relation to Mr Ishaque's repeated statements about his failure to provide ID documents. The Authority then received the detailed email from the Complainant (see §34) , stating that he *had* provided KYC information both to Mr Ishaque and also to Mr Neal. It was reasonable for the Authority to rely on that confirmation.

The Tribunal's view

62. I agree with Mr van Sante for the reasons set out above that the decision in respect of which the reference was made was not unreasonable; in other words, the Authority acted reasonably in issuing the Decision Notice to BCL.

63. In coming to that conclusion I considered carefully whether the fraud was a fact which "ought to have been known to the FSA at the time when the decision was made" or as Mr Ishaque put it, the Authority had failed "to engage with the fraud evidence" he had provided.

64. I accept that the Authority *could* have carried out its own ID checks before it issued the Decision Notice and had it done so, it is likely it would have identified the fraud earlier. But given its role in relation to FOS; the outcome of the JR; the NCA's determinations and the Complainant's particularised and detailed evidence about having provided ID to Mr Ishaque and Mr Neal, it was not unreasonable for the Authority not to carry out its own checks.

65. I went on to consider Mr Ishaque's submissions about how the Authority had behaved in the period leading up to the Decision Notice, including the length of time taken and the issuance of the "binary ultimatum".

66. However, the issue I have to determine is whether *the Decision Notice* was unreasonable. The Tribunal has no supervisory jurisdiction over how the Authority conducts an investigation, or whether the process leading up to the issuance of the Decision Notice was too long. In any event, the Authority was correct that challenges to a FOS award have to be brought via JR, and much of the delay resulted from the Authority pausing action while BCL pursued its JR claim and liaised with the NCA about its SARs.

UNREASONABLY DEFENDING OR CONDUCTING THE PROCEEDINGS?

67. The second issue was whether the Authority acted unreasonably in defending the Decision Notice or in the way it conducted the proceedings at the Tribunal. I first summarise the relevant case law, followed by the parties' submissions and my determination.

The case law

68. In *Market Opinion and Research International Ltd v HMRC* [2015] UKUT 12 (TCC), the Tribunal considered the identical provision which applies in appeals before the First-tier Tribunal (Tax Chamber). It approved a number of propositions from earlier judgments, which included the following (slightly amended to fit with this jurisdiction):

> (1) The focus should be on the standard of handling of the case rather than the quality of the Decision Notice.
>
> (2) It cannot be that any wrong assertion by a party is automatically unreasonable. For a wrong assertion to constitute unreasonable conduct, the party must generally persist in it in the face of an unbeatable argument that he is wrong.
>
> (3) The provision "unreasonably in bringing, defending or conducting the proceedings" is:
>
> > "an inclusive phrase designed to capture cases in which…a respondent has unreasonably resisted an obviously meritorious appeal, or either party has acted unreasonably in the course of the proceedings, for example by persistently failing to comply with the rules or directions to the prejudice of the other side."
>
> (4) The proper enquiry was whether the respondent had unreasonably prolonged matters once they were in the Tribunal, or whether it should have withdrawn the Decision Notice at an earlier stage.

69. The UT had expanded on that final point in *Tarafdar v HMRC* [2014] UKUT 362 (TCC) ("*Tarafdar*") at [34], saying that a tribunal faced with an application for costs on the basis of unreasonable conduct following a party's withdrawal should ask the following questions:

> (1) What was the reason for the withdrawal of that party from the proceedings?

(2) Having regard to that reason, could that party have withdrawn at an earlier stage?

(3) Was it unreasonable for that party not to have withdrawn at an earlier stage?

The submissions

70. Of the submissions made by Mr Ishaque, the following are relevant to the question of whether the Authority acted unreasonably within the meaning of Rule 10(d):

(1) the Authority acted unreasonably in the period before the Reference

(2) the Authority failed to disclose relevant material under FSMA s 394;

(3) the Authority disclosed some evidence late;

(4) the Authority failed to disclose its communications with the Complainant; and

(5) the Authority unreasonably delayed issuing the Notice of Discontinuance.

The period before the Reference

71. TCEA s 29(1) provides that an award can be made of "the costs of and incidental to…all *proceedings* in the Upper Tribunal", and Rule 10(3)(d) applies where a party "has acted unreasonably in bringing, defending or conducting *the proceedings*". The "proceedings" begin when a reference is made, because it is only then that the Tribunal has jurisdiction.

72. Mr Ishaque submitted, in reliance on *Distinctive Care v HMRC* [2019] EWCA Civ 1010 that "pre-proceedings conduct can be relevant where part of a continuous course of unreasonable conduct culminating in the proceedings before the Tribunal".

73. That is not, however, what was decided by *Distinctive Care.* Instead, the Court of Appeal held that it was possible to claim costs incurred before the proceedings, if those costs had been expended to create materials which were then used in the proceedings. Rose LJ (as she then was) gave an example at [39], saying that costs incurred relating to "materials gathered or produced for the purpose of [an HMRC] internal review may then be recycled in the appeal before the FTT".

74. There is no reference in *Distinctive Care* to "a continuous course of unreasonable conduct culminating in the proceedings before the Tribunal". That is a very different point, for which there is no authority.

Section 394

75. FSMA s 394(1) reads:

> "If a regulator gives a person…a notice to which this section applies, it must–
>
> (a) allow him access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;
>
> (b) allow him access to any secondary material which, in the regulator's opinion, might undermine that decision."

76. On 19 November 2025, Mr Ishaque wrote to the Authority, saying:

> "Under section 394 FSMA, we are entitled to understand what material the Authority relied upon in reaching this conclusion."

77. Mr Ishaque then asked the Authority the following questions:

(1) whether the KYC evidence already on the file had been considered when issuing the Decision Notice;

(2) whether the Authority had asked FOS to clarify the procedures by which the award was made; and

(3) whether the Authority was aware that FOS conducts no identity checks of complainants.

78. On 25 November 2025, the Authority sent Mr Ishaque two files of evidence, including emails and attachments, and said "as this case has been referred to the Tribunal… the Authority will prepare a Statement of Case, which will include a disclosure schedule of documents". Mr Ishaque submitted that this was "the appearance of compliance without the substance" as the Authority was required to answer his specific questions and had not done so.

79. That is to misunderstand the purpose of FSMA s 394. The Authority is required by that section to provide the evidence on which it had relied when issuing the Decision Notice. It does not require a regulator to engage in discussions with an applicant about that evidence. The Authority did not act unreasonably in the way it replied to Mr Ishaque's letter of 25 November 2025.

Late disclosure?

80. Mr Ishaque made two points under this heading. The first related to an email sent to BCL on 6 January 2026, which read:

> "The FCA is updating the disclosure list filed/served last year via an additional list in order to add some documents which the FCA no longer held but had requested from the FOS, as was noted in relation to item 51 on the FCA's existing disclosure list. The FCA has also added some new documents to the disclosure list which were recently supplied by FOS beyond those requested by the FCA in connection with item 51."

81. Mr Ishaque submitted that this email demonstrated that the Authority failed to comply with its disclosure obligation and so acted unreasonably.

82. That is plainly not the position. On the contrary, it demonstrates that the Authority was complying with its obligations to provide BCL with the evidence it had subsequently obtained from FOS.

83. Mr Ishaque's second point was that on 9 January 2026, BCL had applied to the Tribunal for directions that the Authority disclose internal memoranda, internal analyses, decision-making papers, and briefing notes prepared for the decision maker. The Authority had objected to that application for secondary disclosure, and a case management hearing was listed for 30 April 2026. Before that hearing took place, BCL applied for the Authority to file and serve witness statements from two employees.

84. On 6 April 2026, Mr Parkinson replied on behalf of the Authority, saying:

> "…given that the specific disclosure application set down for hearing on 30 April 2026 will consider the appropriateness of disclosing internal FCA material (and so may have a bearing on the appropriateness of whether FCA witness evidence should be provided), it makes little sense in any event for you to demand the provision of FCA witness evidence at this stage."

85. Mr Ishaque submitted that Mr Parkinson had thereby "admitted in writing that the FCA had not disclosed relevant internal material", and this was unreasonable. In consequence, said Mr Ishaque, the costs incurred by BCL in preparing for the case management hearing were allowable in full on the indemnity basis.

86. I reject that submission. The Authority had contested BCL's disclosure application and discontinued before the hearing. As a result, the Tribunal did not rule on whether BCL was correct that secondary disclosure was required, or whether the Authority was correct. There is thus no basis on which I could find that the Authority was acting unreasonably in not providing that material.

Failure to disclose contacts with the Complainant

87. Mr Ishaque submitted that the Authority acted unreasonably and in breach of its duty of candour because it failed to disclose its contacts with the Complainant until the Notice of Discontinuance.

88. Mr van Sante responded by saying that communications between a party and a witness are privileged, and the Authority was thus not acting unreasonably in not disclosing the fact that it had contacted the Complainant. Mr Ishaque accepted that the content of the communication was privileged, but said disclosure was required of "the fact that a communication has taken place". He cited no authority for that proposition.

89. I agree with Mr van Sante. Contacts between a party in litigation and a possible witness for the purposes of litigation are protected from disclosure by litigation privilege. The Authority was therefore not acting unreasonably by not disclosing to Mr Ishaque the fact that it was communicating with the Complainant.

Delay in discontinuing

90. Mr Ishaque also submitted that it was unreasonable for the Authority to delay until 14 April 2026 before issuing the Notice of Discontinuance, when the video call with the Complainant had taken place on 11 March 2026. Mr Ishaque said that by 14 April 2026, BCL had incurred costs for the case management hearing, which were then thrown away, and had BCL been informed earlier, those costs would not have been incurred.

91. Mr van Sante said it was reasonable for the Authority, having noted the similarity between the Complainant and Mr B, to follow up on 13, 16 and 20 March 2026. It was only after the Complainant failed to respond to those subsequent messages that the Authority decided to discontinue, and that change of position required certain internal procedural steps to be taken before the Notice of Discontinuance could be issued.

92. I considered whether it was unreasonable for the Authority not to withdraw sooner, see *Tarafdar,* and find as follows

(1) it was reasonable for the Authority to give the Complainant time to respond to the final chaser email. A two week waiting period would have ended on 27 March 2026; and

(2) there was then a further period of just over two weeks before the Authority informed BCL of the discontinuance, during which the Authority implemented its internal procedures. I take judicial notice of the fact that Easter fell in the middle of that fortnight, and I find that this period too was reasonable.

93. I thus reject Mr Ishaque's submission that there was an unreasonable delay.

Overall conclusion on Rule 10(3)(d)

94. For the reasons set out above, I find that the Authority did not act unreasonably in defending or conducting the proceedings, and I refuse the parts of the Application which relate to that Rule.

THE SCHEDULE

95. Even had Mr Ishaque succeeded in showing that the Authority had acted unreasonably, I would have rejected the Application because BCL failed to meet Rule 10(5), which requires a person making a costs application to "send or deliver with the application a schedule of the costs or expenses claimed sufficient to allow summary assessment of such costs or expenses by the Upper Tribunal".

The hourly rate

96. The first issue is the hourly rate. Mr Ishaque was acting as a litigant in person, and the Litigants in Person (Costs and Expenses) Act 1975, as amended by the TCEA s 48(1) and Schedule 8, provides that the provisions of that Act apply to proceedings before the Tribunal. In the Directions issued for this hearing, I explained that Mr Ishaque must either claim the litigant in person rate or provide evidence of financial loss.

97. Mr Ishaque claimed £386 per hour, on the following basis:

(1) He was the only fee-earner for BCL and was required to "commit to the defence of these proceedings without reservation", so that BCL was unable to earn fees.

(2) BCL's "baseline turnover" was £497,942 per annum.

(3) There were 1,200 "notional fee-generating hours per annum".

(4) Dividing the turnover by the hours gave an hourly rate of £415.

(5) CPR 46.5(2) provides that a litigant in person cannot recover more than two thirds of the amount that would have been allowed had they been represented by a legal representative. Mr Ishaque decided that the appropriate "notional solicitor rate" was "London Grade A at a minimum" or £579 per hour, on the basis that Mr van Sante was a barrister and so would have charged at least that amount. Mr Ishaque said that "equity demands the same comparator applies to BriceAmery".

(6) A relevant factor was that "the FCA's Decision Notice directly caused the collapse of a signed £605,000 SPA [Sale and Purchase Agreement]" and so caused financial loss.

98. Mr van Sante did not accept the above calculation methodology. He pointed out that Mr Ishaque had previously told the Authority on 7 May 2024 (see §23) that "currently there isn't any work" for BCL, and submitted that the proceedings had not caused BCL to lose revenue because the company had no income in any event.

99. Secondly, Mr van Sante questioned the basis for Mr Ishaque's figure of £497,942, and in my judgement he was right to do so. BCL's accounts for the year to October 2023 (before the Authority contacted BCL) show turnover figures of £163,946, while the accounts for the following year disclose turnover of £226,856, so turnover increased after the Authority became involved. The accounts for the year to October 2025 give the turnover as £167,554, more or less the same as in 2023. Mr Ishaque was unable to explain during the hearing how he had arrived at the £497,942.

100. In relation to the sale of BCL, Mr van Sante submitted that there was no evidence that the agreement to sell BCL to Mr Neal had been terminated as the result of the Decision Notice: Mr Neal had served a witness statement to support the Reference, and the Deed gives a longstop date for completion as 31 December 2026, see §29.

101. I agree with Mr van Sante that Mr Ishaque has not provided reliable evidence to support his use of "financial loss" figure of £386 rather than the litigant in person rate.

The hours claimed

102. Mr Ishaque claimed a total of 2,797 hours, including 801 hours for the JRs and the Court of Appeal. Removing those hours from the Application[2] still leaves almost 2,000 hours relating to the dispute with the Authority, the Tribunal proceedings and the drafting of the Application.

[2] In this rough calculation, I have not separated out the parts of the "Cross Strand" which relate to the JRs and the Court of Appeal.

103. Some of those hours are, on the face of it, impossible. For example, in relation to the single day of 23 May 2024, BCL claimed 32.75 hours, all of which was allegedly spent by Mr Ishaque. He sought to explain this (and other very high figures) by saying that in the period before directions were issued for this costs hearing, he had not made a note of the time spent, and the hours identified in the Schedule are instead an estimate based on each of the documents, and are only loosely tied to the particular days.

104. He said that the position changed after the case management hearing:

> "From 30 April 2026, when the costs application was made and contested costs proceedings became foreseeable, I began to record my time on this matter contemporaneously, on a day-to-day basis, as activities were undertaken. The Strand 8 (costs application) hours are accordingly recorded contemporaneously rather than reconstructed,"

105. However, that is not borne out by the figures. Instead, the same approach continued: Mr Ishaque's analysis of time spent on preparing the Application between 30 April to 4 May totals an astonishing 151 hours, so 30.5 hours a day.

106. Even if I accepted Mr Ishaque's approach of estimating the time required for a particular action by reference to the documents in question, the time claimed is, as Mr van Sante said, disproportionate and lacking in credibility. The following are some examples:

(1) Mr Ishaque charged 10 hours on 2 May 2024 relating to arranging the meeting with the Authority, of which six relate to an exchange of emails confirming the date.

(2) On 15 May 2024, the Authority wrote to BCL noting that it had not paid the FOS Award and asking for a written explanation. On 16 May Mr Ishaque sent a two page letter in response; the content largely replicates points previously made in correspondence with FOS. Mr Ishaque has claimed 33.25 hours for that letter, in addition to the 20.25 hours said to have been spent on the related FOS communication.

(3) On 20 May 2024, the Authority wrote to BCL repeating points in its earlier letter of 15 May. Mr Ishaque claimed 24 hours of time for considering and responding to that second letter; his reply was very brief.

(4) On 8 July 2025, Mr Ishaque claimed 2.5 hours for a letter requesting a one month extension of time.

(5) On 12 August 2025, he claimed 5.5 hours for the following email:

> Thank you for your email. I would just like to seek clarification as to whether the Warning Notice stipulates that the case team will provide a written response to our representations? Paragraphs 16–17 state only that we may submit written representations (and oral representations in exceptional circumstances) and that the Authority or decision maker will consider these before determining whether to proceed with cancellation. The notice does not appear to provide for any procedural step whereby the case team issues a formal "Response" to our representations prior to the decision maker's determination."

Conclusion on the Schedule

107. I agree with Mr van Sante's description of the Schedule as being "so unreliable that it cannot form the basis for assessment".

THE TRIBUNAL'S DISCRETION

108. Even if there is unreasonable behaviour, the Tribunal is not required to award costs: under the TCEA it has a discretion to do so. In his skeleton, Mr van Sante said:

> "The Authority submits that discretion should not be exercised where BriceAmery made demonstrably repeated false statements to the Authority. Its concealment of the February 2024 documents was deliberate and sustained over two years."

109. By the time of this hearing, it was not in dispute that Mr Ishaque had withheld from the Authority the information that he had received ID documents from the Complainant. In his second witness statement, Mr Ishaque said:

> "I recognise that the absolute terms 'never provided' and 'none provided', read literally, were factually inaccurate, because an email attachment containing a passport image was physically received on 20 February 2024. I regret this imprecision."

110. Mr van Sante submitted that this concealment mattered, because it denied the Authority the opportunity:

(1) to engage with BCL so it could understand why the firm was nevertheless so sure that the Complainant was acting fraudulently; and

(2) to discuss with BCL what additional checks could be undertaken, for instance by obtaining independent verification of the ID documents from a lawyer (as the Authority asked the Complainant to do after the video call).

111. Mr Ishaque's position was that had he told the Authority about having received a copy of Mr A's passport and the bank statements, that would only have confirmed the Authority's (incorrect) view that BCL should comply with the FOS Award, so it "wouldn't have changed anything".

112. Plainly I cannot make a finding of fact as to what the Authority would have done had BCL told the Authority that the Complainant had provided KYC information. I do, however, find as a fact, on the basis of the evidence and Mr Ishaque's admission, that he did not tell the truth when he repeatedly told the Authority that he had not received any ID documents from the Complainant.

113. In *Hussein v FCA* [2018] UKUT 186 (TCC), the Tribunal held at [224] that "it is a very serious matter not to be candid and truthful with one's regulator", and in *Staley v FCA* [2025] UKUT 203 (TCC) at [507], the Tribunal said:

> "…for the proper functioning of the regime of oversight of the financial services sector and the market, the Authority relies upon, and must be able to rely upon, the veracity and completeness of the representations made to it and openness in disclosing matters of which it would reasonably expect to be given notice."

114. I respectfully agree. If I were to have found that (a) the Authority had acted unreasonably, and (b) the Schedule had been constructed in a compliant manner, I would nevertheless have refused to exercise my discretion to award costs to BCL. That is because it would not be in the interests of justice to award costs to a party which had concealed material facts from its regulator.

Overall conclusion

115. For the reasons set out above, I refuse the Application.

ANNE REDSTON
UPPER TRIBUNAL JUDGE