Neutral citation: **[2026] UKUT 00217 (TCC)**

UT Consolidated Case Number: UT/2025/000072

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: 23 March 2026
Judgment date: 12 June 2026

Before

JUDGE MARK BALDWIN

Between

ALEC FINCH
ROBERT FINCH

The Applicants

and

THE FINANCIAL CONDUCT AUTHORITY

The Authority

<u>Representation</u>:

The Applicants in person

For the Authority: Dominic Howells, of counsel, instructed by the Authority

DECISION

INTRODUCTION

1. On 31 July 2025 each of Mr Alec Finch ("Alec Finch") and Mr Robert Finch ("Robert Finch") (each being an "Applicant" and together "the Applicants") referred (individually a "Reference" and together the "References") to the Tribunal a decision notice (a "Decision Notice" and together the "Decision Notices") relating to him dated 4 July 2025.

2. In relation to each Applicant the Authority concluded that he failed to act with integrity and breached Statement of Principle 1 and was therefore not a fit and proper person because he lacked honesty and integrity and posed a risk to consumers and to the integrity of the UK financial system. In the light of those findings the Authority decided to:

> (1) publish a statement of the Applicant's misconduct in breaching Statement of Principle 1, pursuant to section 66 of the Financial Services and Markets Act 2000 ("FSMA"); and
>
> (2) make an order prohibiting the Applicant from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm, pursuant to section 56 of FSMA.

3. In each case the Authority would also have imposed a financial penalty but decided not to do so as each Applicant had provided evidence that the imposition of a financial penalty of any amount would cause him serious financial hardship.

4. This hearing is concerned only with applications (the "Privacy Applications") dated 28 October 2025 by each of the Applicants for:

> (1) a direction under rule 14(1) and (2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the "Rules") that there be no publication of the Decision Notice relating to him pending the outcome of the substantive hearing of his reference; and
>
> (2) a direction pursuant to paragraph 3 of Schedule 3 to the Rules that the register is not to include particulars of his reference.

BACKGROUND

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

> (1) Alec Finch (who is Robert Finch's father) was appointed a director of AFL Insurance Brokers Limited ("AFL") (now known as Ambon Brokers Limited) on 10 August 1998 and resigned from this position on 4 May 2020. Alec Finch also held the CF1 Director controlled function at AFL from 14 January 2005 until 5 June 2019 and the CF2 Non-Executive Director controlled function from 7 June 2019 until 8 December 2019.
>
> (2) Robert Finch was appointed a director and Chief Executive of AFL on 22 January 2009 and resigned from this position on 4 May 2020. Robert Finch also held the CF1 Director controlled function at AFL from 19 February 2009 until 1 August 2019.
>
> (3) AFL was a wholesale insurance broker. AFL was authorised by the Authority on 14 January 2005 and remains authorised by the Authority. AFL had permission to carry out a number of regulated activities in respect of insurance, consumer credit, and investments and was permitted to hold and control client money.

(4) On 14 September 2017, Alec Finch sold 58% of the share capital of AFL, which he owned, to Next Generation Holdings Limited ("NGHL") for £2,119,900. Whilst Alec Finch was divesting himself of his shares, Robert Finch's own shareholding increased and by 2 January 2018, he held 22% of the share capital of AFL.

(5) On 21 August 2020, after the discovery of a significant deficit in AFL's client money account, AFL and NGHL commenced High Court proceedings against the Applicants (and others) for loss and damages. The claim centred on allegations that NGHL was the victim of fraud by the Applicants (and others) and that a false picture was given of AFL's financial position.

(6) On 27 September 2023, HHJ Johns KC handed down judgment (the "Judgment") in the claim in the High Court. The key findings from the Judgment are as follows:

(a) there was a significant deficit in the client money account of AFL;

(b) the significant deficit was there at the time Alec Finch sold his shares to NGHL in 2017 and both Applicants were aware of the deficit at the time of the sale;

(c) AFL was insolvent from at least 30 June 2014;

(d) there was a "major fraud" by the Applicants on NGHL, and the Applicants were the "driving force" behind all elements of the fraud;

(e) the Applicants wrongfully used client money and made "improper withdrawals" from the account, moving money "illegitimately" to AFL's office account to pay business expenses;

(f) there was a series of false accounting accruals which the Applicants were "intimately involved in the detail of" which served to distort and improperly inflate the stated income and the balance sheet of AFL;

(g) the Applicants acted dishonestly and made fraudulent misrepresentations to NGHL in 2017 about AFL's debtors and that the debts were real and recent, and these misrepresentations induced NGHL to purchase Alec Finch's shares;

(h) Alec Finch breached a number of warranties made to NGHL at the time of purchase;

(i) the Applicants knew by using client money to pay business expenses that AFL was not conducting its business in accordance with the Authority's regulations;

(j) the Applicants breached section 172(1) Companies Act 2006 (duty to promote the success of the company) with regards to AFL;

(k) NGHL and AFL suffered loss and damage as a result of the Applicants' "unlawful actions" and the Applicants deliberately acted with others to injure NGHL.

6. The Appellants applied for permission to appeal against the Judgment., Permission was refused by HHJ Johns KC. The Applicants then sought permission to appeal from the Court of Appeal, but this was rejected as the Court of Appeal was "reluctant to interfere with a trial judge's findings".

7. The Appellants applied on 23 April 2025 to the Court of Appeal to have the Judgment overturned on the grounds (inter alia) that important new evidence has now come to light which was not known at the time of the Judgment. On 4 June 2025, the application was refused.

8. The Appellants have initiated a claim in the High Court seeking to have the Judgment set aside under the principle in *Takhar v Gracefield Developments Ltd,* [2020] AC 450 ("*Takhar*"), on the

basis that the Judgment was obtained by fraud. This claim was struck out by Master Pester, but his decision is subject to appeal by the Applicants. The outcome of that appeal is currently unknown.

THE PARTIES' SUBMISSIONS

9. The Applicants submit that:

(1) The immediate publication of the Decision Notices, which rely entirely on the premise that the Judgment is a "final determination", would cause fundamental prejudice by pre-judging the merits of the Applicants' *Takhar* claim and irreparably compromising the Applicants' position in both the High Court and before the Tribunal.

(2) The Authority must know that key evidence presented at the High Court trial regarding the Authority's involvement was false. If the Authority had carried out a thorough investigation and compared the evidence given at trial with the facts in their possession, it would have been clear that key aspects of that evidence which influenced the Judgment were misleading.

(3) The Authority failed to conduct a full and fair investigation and relied solely on the Judgment even though there is evidence that the Judgment was wrongly obtained. This point is reinforced by the amount of fresh evidence, undermining the Judgment, which now forms the basis of the *Takhar* claim.

(4) Despite these points, the Authority seeks to proceed with publication now, and for all intents and purposes, officially endorse the false testimony given at trial. This undermines the Tribunal's integrity and severely compromises the Applicants' High Court challenge.

(5) Publication of the serious findings of the Decision Notices before the final resolution of the Applicants' challenges will cause the Applicants immediate, severe, and irreparable reputational and financial harm. The harm caused by the Decision Notices is a qualitative leap from the civil Judgment. The Judgment was a civil finding; the Decision Notices are the vehicle for the permanent career-ending sanction. The finding of a "lack of honesty and integrity" by a statutory regulator is the destruction of livelihood for any financial professional. Publication would unjustly tarnish Alec Finch's long and successful career in the insurance industry, undermining his legacy and contributions to various industry and charitable organizations. For Robert Finch, publication would severely hinder his active job search in the US insurance industry, jeopardizing his ability to provide for his family and rebuild his life and career.

(6) The issues addressed in the Decision Notices relate to historical civil proceedings and there has not at any time been any consumer detriment which would necessitate an immediate warning to the market. The public interest in timely publication is minimal and is entirely outweighed by the prejudice to the Applicants.

10. The Authority submits that:

(1) The Judgment is publicly available and has been reported in the insurance trade press.

(2) What the Decision Notices reveal which is not already in the public domain is that the Judgment has come to the attention of the Authority which has concluded, based on the facts found by HHJ Johns, that the Applicants lack honesty and integrity and are not fit

and proper persons. No reasonable member of the public could be in the least surprised that the Authority had reached that conclusion on those facts.

(3) The Decision Notices are accompanied by a description of the arguments put forward by the Applicants before the RDC. They make it clear that the Applicants opposed the Decision Notices and put forward a series of arguments (on which they continue to rely) why the Decision Notices should not have been issued. The *Takhar* claim is also a matter of public record. If the Privacy Applications are refused, it will be clear from the Tribunal register that the Applicants have not simply accepted the Decision Notices but continue to oppose them. The published Decision Notices will also bear a prominent marking indicating that (i) the matter has been appealed to the Tribunal, and (ii) the Authority's findings in the Decision Notices are therefore provisional.

(4) There is no evidence to support the contention that publication would prejudice the Applicants' position in the High Court. Nor will publication of the Decision Notices prejudice the Applicants in the Tribunal. The proceedings before the Tribunal are an appeal against the Decision Notices.

(5) The Authority's case on the evidence allegedly undermining the Decision Notices is that the Applicants' case is not well founded. The Judgment stands as a final judicial determination on liability. The Applicants have been refused permission to appeal the Judgment on liability three times – once by the Judge at first instance and twice by the Court of Appeal. The *Takhar* claim has been struck out by Master Pester, although his decision is subject to appeal. In any event, the Applicants' case is to be determined following the substantive hearing of their appeal. Arguments about the merits are irrelevant to the determination of the Privacy Applications.

(6) The Applicants explained the respects in which, as a result of the Judgment and the proceedings leading to it, they have allegedly suffered loss, including negative press coverage, financial strain, lack of employment, consultancy or director engagements, loss of home and forced relocation, and social and emotional distress. The question is what further harm would be caused by the publication of the Decision Notices which has not already been caused by the Judgment. There is no evidence to support the claim of serious harm through the tarnishing of Alec Finch's legacy. Anyway, mere embarrassment or a risk of damage to reputation is insufficient to justify prohibiting publication. There is no evidence of jeopardy to Robert Finch's career prospects arising from the publication of the Decision Notices (as opposed to the Judgment), much less cogent evidence establishing a significant likelihood of severe damage to his livelihood.

THE LAW

11. 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…"

12. 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.

13. 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."

14. 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."

15. 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 a number of cases, which are helpfully summarised by Judge Redston in *Kingsbridge Capital Advisers Ltd v FCA*, [2023] UKUT 000103 (TCC) ("*Kingsbridge*") at [40] (omitting internal citations):

> "(1) FSMA s 391 gives rise to a presumption that both Decision Notices and Final 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 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) In order to tip the scales heavily weighted in favour of publication 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 draw 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. An applicant is not required to show that damage or destruction is an inevitable consequence.
>
> (10) A risk of damage to reputation in unlikely to be sufficient to justify a prohibition on publication."

16. In addition, Judge Redston observed at [55] 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 v FCA*, [2018] UKUT 414 (TCC) ("*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*")."

17. 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]. "

18. 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."

DISCUSSION

19. As discussed above, the starting point must be the principle of open justice, and with it a presumption in favour of publication. To succeed, the Applicants must establish by cogent evidence that publication of the Decision Notices would cause serious harm or have another result which would otherwise make it unfair to publish.

20. An unevidenced assertion by an applicant of unfairness in publishing a decision notice (even when augmented, as it is here, by the Applicants' criticisms of the Authority's behaviour) 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.

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

22. The Applicants clearly have very significant reservations about and criticisms of the Judgment, which they say is undermined by additional evidence not available at trial and was obtained by fraud. They also criticise the Authority for failing to carry out an investigation of its own, particularly when the Authority knew (or at the very least would have known if its various departments spoke to each other) that some of the important evidence led at trial was incorrect.

23. The questions of the extent to which the Authority is entitled to rely on the Judgment and whether it should have carried out an investigation of its own are matters to be decided at the substantive hearing of the References, which is set down for 7-8 September this year. As the authorities discussed at [16] above make clear, the substantive merits of the References (the Applicants' likelihood of success in the substantive reference proceedings) are not relevant matters for the purposes of determining the Privacy Applications.

24. All these issues and criticisms can be ventilated at the substantive hearing and, if the References are successful, there will be a public decision that vindicates the Applicants' position. I accept (as does Mr Howells) the Applicants' submission that such a decision may not remedy all detriments

suffered by the Applicants, but that (as the Supreme Court pointed out in *Khuja*) is part of the price to be paid for open justice.

25. As Mr Howells observed, the Decision Notices do not tell a reader anything more than that the Authority had responded to the Judgment in a way which is entirely in line with what a reasonable person might expect the Authority to do. All the findings in the Judgment are already in the public domain and have been discussed in the insurance industry press. Publishing the Judgment is not going to expose any allegations or findings against the Applicants that are not already public.

26. The next issue raised by the Applicants is that the Authority, by publishing the Decision Notices, would appear to be endorsing the Judgment. I do not agree with this submission. It is clear from the Decision Notices that the Authority relied on the Judgment and has not done anything to check or validate the findings of fact. It is, of course, one of the Applicants' principal criticisms of the Authority that it has not taken steps to validate the evidential basis of the Judgment for itself.

27. The Applicants say that a person seeing the Decision Notices would not appreciate that the Authority did not endorse (as opposed to simply rely on) the Judgment. I do not agree that someone who is capable of finding and reading a decision notice would be incapable of realising that the Authority was relying on the Judgment not endorsing it.

28. Also, the published Decision Notices will bear a prominent marking indicating that: (i) the matter has been appealed to the Tribunal; and (ii) the Authority's findings in the Decision Notices are therefore provisional. That will make it clear that the position the Authority adopted in the Decision Notices is not final and unchallenged.

29. I do not accept the submission that publication of the Decision Notices amounts to a qualitative leap from the civil Judgment. There is no meaningful step up in negativity as far as the Applicants are concerned between being found to be the architects of a significant fraud by a judge sitting in civil proceedings in the High Court and the Authority taking additional regulatory action based on that finding.

30. I also do not accept that publishing the Decision Notices would have an adverse impact on the Applicants' chances of success in their *Takhar* challenge to the Judgment or in the substantive Reference proceedings. The *Takhar* challenge will be determined in the High Court/Court of Appeal, which will form their own views on the strength of the Applicants' case. I do not accept that they would be swayed by the publication of Decision Notices, which are clearly marked as having been appealed and therefore as being provisional. Similarly, in the substantive Reference hearing, this Tribunal will review the Authority's proposed actions in the Decision Notices in the same, careful way whether they have been published or not.

31. The Judgment has clearly had very significant adverse consequences for both Applicants. They both say that they have lost everything. Alec Finch needed to sell his house and is now living in a rented flat far away from where he used to live and is avoiding social contact. Robert Finch has moved to America and is trying to rebuild his career there. He said that he has been unable to find work in a professional capacity, because the Judgment is picked up by HR departments who regard that as an obstacle to his employment. He said that the publication of the Decision Notice relating to him would only add to that difficulty. He also says that his wife is having similar difficulties, because checks on her when she seeks employment throw up the Judgment and she is tarred by association with the Applicants.

32. All these detriments are already being suffered by the Applicants and Mrs (Robert) Finch. The Applicants have clearly both lost their sources of income and their capital. Robert Finch and his wife are already finding it very difficult to find professional status employment. Both Applicants are already suffering the social stigma of being found to have been the authors of a significant fraud. The Applicants have not produced any cogent evidence to demonstrate how the publication of the Decision Notices would make their (or Mrs Finch's), admittedly already very unpleasant, position any worse.

33. It is possible that the publication of the Decision Notices may cause additional embarrassment. Publication might remind people, particularly journalists, of the Applicants and the factual matrix surrounding the Judgment. However, all the relevant facts are already in the public domain. In such a case it is hard to see how publication could worsen the current position of an Applicant in a way which amounts to serious harm or otherwise makes it unfair to publish a decision notice.

34. It is also clear on the authorities that personal embarrassment is generally unlikely to be a sufficient ground for refusing publication. This will almost inevitably be the case where (as is the case here) a person's reputation has effectively already been destroyed by well publicised, serious adverse findings by a court or tribunal.

35. The Applicants have not demonstrated by cogent evidence that publication of the Decision Notices would cause serious harm or otherwise make publication of the Decision Notices unfair. As the underlying factual matrix is in the public domain, has been reported on and has already resulted in very material adverse consequences for the Applicants (and Mrs Finch), this is not particularly surprising.

36. For these reasons I dismiss the Privacy Applications.

UPPER TRIBUNAL JUDGE MARK BALDWIN

RELEASE DATE: 12 June 2026