Neutral Citation: **[2026] UKUT 00306 (TCC)**

Case Number: UT/2024/000146

UPPER TRIBUNAL
Tax and Chancery Chamber

Rolls Building, Fetter Lane London EC4A 1NL

Information Notices – penalties – reliance on adviser – reasonable excuse – penalties

Heard on: 19 May 2026
Judgment date: 07 August 2026

Before

JUDGE NICHOLAS ALEKSANDER
JUDGE JENNIFER DEAN

Between

DAVID HILL
DAVID MCCRACKEN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Michael Firth KC of counsel, instructed by The Independent Tax & Forensic Servies LLP

For the Respondents: Ms Calypso Blaj of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal against a decision of the First-tier Tribunal Tax Chamber ("the FTT") released on 16 September 2024 ("the Decision"). In dismissing the Appellants' appeals against penalties imposed for non-compliance with information notices, the FTT found that neither Appellant had a reasonable excuse and that the penalties should be upheld in full.

2. It is the case for the Appellants that the FTT erred in law, inter alia, in its approach to the issue of reasonable excuse where reliance is placed on an adviser.

3. The Appellants' case before the FTT was that they had a reasonable excuse for not complying with the information notices because:

> (i) They were consistently advised that no action was needed because their pension schemes had been wound up.
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> (ii) As a result of that advice, the Appellants believed they did not have an obligation to comply with the information notice, and
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> (iii) It was reasonable for the Appellants to rely on that advice and, therefore, to hold that belief.

4. We are grateful to all counsel for their clear and concise written and oral submissions.

5. References in square brackets [] are to paragraphs in the Decision unless otherwise indicated.

THE FTT'S FINDINGS OF FACT

6. There was little dispute about the facts before the FTT, the issue between the parties was whether those facts amounted to a reasonable excuse ([52]).

7. The following summary is taken from the FTT's helpful findings at [3] – [33] of the Decision:

> **"Background**
>
> ***Information Notices***
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> 3. Mr Hill was the scheme administrator of the Molten Metal 2012 Pension Scheme, and his Information Notice was issued to him on 20 January 2018.
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> 4. Mr McCracken was the scheme administrator of the DMI Pension Scheme, and his Information Notice was issued to him on 22 January 2018.
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> 5. At the time, Liddell Dunbar Ltd (LD) operated the schemes on behalf of the scheme administrators as a practitioner. Following receipt of the Information Notices, LD engaged Independent Tax (IT) to advise LD in respect of the Information Notices and to correspond with HMRC on behalf of the appellants and other individual scheme administrators of pension schemes where LD were the practitioner acting for the scheme administrator.
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> 6. A review was requested of the Information Notices. A review conclusion letter was issued on 22 October 2018, copied to each of the appellants; this varied some of the content of the Information Notices but otherwise upheld them. On 12 November 2018 LD advised the appellants that they had discussed the review conclusion letter with IT and that IT's view was that, as the pension scheme had been wound up, there "should be no need to respond" to provide the information requested by the varied Information Notices.
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> 7. On 21 November 2018 IT made the same point in a letter to HMRC, informing them that the relevant pension schemes had been wound up and so there could be no

liability to produce information or documents. HMRC replied on 26 November 2018, advising that the Information Notices had been issued to the individual scheme administrators and not to the pension schemes, and that the individuals remained liable to comply with the Information Notices. Neither of these letters was copied to the appellants.

Initial penalties

8. In December 2018, HMRC issued the appellants with penalties of £300 each for failure to comply with the Information Notices.

9. On 17 December 2018 LD wrote to the appellants, advising them that no action was required in respect of the penalty letters as HMRC had been advised that the pension schemes had been wound up and that IT would "be taking up" the issuing of the penalties with HMRC.

10. On 19 December 2018, IT wrote to HMRC. The letter was not copied to the appellants. The letter included a request to appeal the penalties on the basis that (inter alia) these pension schemes no longer existed as they had been wound up and so there was no tax position to check. The letter stated that appeals had been made to the Tribunal in respect of Information Notices issued to pension schemes which had not been wound up. IT referred to the legislation set out in HMRC's letter of 26 November 2018 and stated that the individuals were not obliged to deal with information notices wrongly issued to them as the administrator of a wound up scheme.

First tranche of daily penalties

11. On 19 February 2019, HMRC issued the first tranche of daily penalties of £2,040 (at £30 per day) to each of the appellants. The penalty letters included the statement that, if the appellants did not agree that the penalties were due, they should appeal to HMRC.

12. Mr Hill forwarded this to LD who replied that the stance remained the same, and not to pay the penalty. They advised that IT were still in communication with HMRC.

13. On 21 March 2019 HMRC wrote to IT, copying the letter to the appellants, confirming that the penalties had been issued to the individuals and not to the pension schemes because the Information Notice had been issued to the individuals, not the pension schemes. The letter stated that, as no appeal had been made to the Tribunal against the Information Notices (at that time), the Information Notices were treated as settled and that further penalties would arise if the failure to comply with the Notices continued.

14. LD emailed the appellants in late March/early April 2019 (the dates varied slightly between the appellants, but the email was the same) and described the letter from HMRC as alarming and unreasonable.

Second tranche of daily penalties

15. On 4 July 2019 HMRC issued a second tranche of daily penalties of £8,040 (at £60 per day) to each of the appellants. The penalty letters included the statement that, if the appellants did not agree that the penalties were due, they should appeal to HMRC.

16. On 26 July 2019 LD wrote to the appellants. This email was not apparently initially received by Mr McCracken, but it was resent to him on 8 August 2019. This letter advises that IT would be appealing the new penalties to HMRC.

17. The letter also set out a briefing drafted by IT for the scheme administrators. The briefing stated that there were two categories of scheme administrators involved; the first, whose schemes had not been wound up at the start of proceedings, "were all listed for Tribunal" and most of those had now been wound up. The second, including

the appellants, were described as being in a technical argument in relation to the pension schemes as IT considered that any obligations had ceased on winding up. The IT briefing stated that although HMRC were prepared to accept late appeals from individuals, IT considered that this would validate HMRC's arguments that the Information Notices had been validly issued if such appeals were submitted.

18. IT wrote to HMRC on 1 August 2019 appealing the latest penalties, repeating the arguments made in December 2018, particularly their view that the obligations of a scheme administrator ceased on winding up of a pension scheme. This letter was not copied to the appellants.

19. On 16 September 2019 HMRC wrote to IT, with the letter being copied to the appellants, advising that the review conclusions in October 2018 were treated as settled as no appeal had been made to the Tribunal and the Information Notices therefore needed to be compiled with. The letter confirmed that the penalties remained in place. HMRC advised that the second tranche of daily penalties had been issued as no appeal had been received.

20. On 26 September 2019, LD wrote to the appellants with a briefing note from IT in response to HMRC's letter of 16 September 2019. This email provided a summary of the information in the email of 26 July 2019, that there were two groups of schemes, distinguishing between the pension schemes which were wound up before the Information Notices were issued and the pension schemes which had not been wound up before the Information Notices were issued. The email confirmed again that the Information Notices in the latter group had been appealed to the Tribunal. The email states that IT had not changed their opinion on the issues and that they were seeking a meeting to discuss the matters with HMRC.

21. On 9 October 2019, LD sent a further email with a briefing note from IT which confirmed that they were seeking a meeting with HMRC and that HMRC had confirmed that they would review the letter sent on 16 September 2019. On 29 October 2019, LD wrote to the appellants again, advising that HMRC had acknowledged an application for ADR and asked for a meeting to discuss the matter in more detail.

Third tranche of daily penalties

22. On 16 December 2019, HMRC issued a third tranche of penalties of £9,720 to Mr Hill (at £60 per day).

23. On 18 December 2019, HMRC issued a third tranche of penalties of £10,020 to Mr McCracken (at £60 per day).

24. On 20 December 2019, IT wrote directly to Mr McCracken. It seems likely that they also wrote to Mr Hill in a similar form, although only the email to Mr McCracken was provided in the bundle and Mr Hill did not specifically refer to receipt of such an email. This email advised that HMRC had rejected the application for ADR and that IT proposed now appealing the Information Notice to the Tribunal.

25. On 14 January 2020, IT wrote to HMRC to appeal the penalty issued to Mr Hill on 16 December 2019. The grounds of appeal were the same as those in earlier appeals.

26. On 16 January 2020, IT similarly appealed the penalty issued to Mr McCracken on 18 December 2018.

27. On 27 January 2020. IT wrote again to Mr McCracken. This email confirmed that IT was now communicating directly with the scheme administrators involved as LD had gone into liquidation. They confirmed that the penalties had been appealed to HMRC, and that the Tribunal appeals had also been submitted. They proposed that a sample of cases be progressed to minimise costs.

28. On 6 February 2020, HMRC rejected the appeals on the basis that HMRC considered that there was no reasonable excuse for the failures to comply with the varied Information Notices.

29. On 21 February 2020, IT wrote to the appellants. This repeated the information in the email to Mr McCracken sent on 27 January 2020, noting that not all of the scheme administrators had received the previous update. The letter also asked for some information regarding LD's actions regarding the appointment of the individuals as the scheme administrators of their schemes.

30. On 6 March 2020 IT requested a review of HMRC's rejection of the appeal against the penalties. HMRC wrote to the appellants on 20 May 2020 to confirm that a review would take place. On 25 September 2020, HMRC's review conclusion letter upheld the penalties on the basis that there was no reasonable excuse for the failure to comply with the Information Notices.

31. On 9 April 2020, the penalties issued in December 2018, February 2019 and July 2019 were appealed to the Tribunal. It has been separately decided that these penalties were validly appealed to HMRC and the Tribunal.

32. On 1 October 2020, IT wrote to the appellants advising that they intended to appeal HMRC's review conclusion letter on the penalties to the Tribunal.

33. On 23 October 2020, the penalties issued in December 2019 were appealed to the Tribunal."

8. The FTT heard evidence from four witnesses:

(i) Mr David Hill

(ii) Mr David McCracken

(iii) Mr Gary Brothers of Independent Tax on behalf of the Appellants

(iv) Mr Richard Fulwood, officer of HMRC.

LEGISLATIVE PROVISIONS

9. There was no dispute about the relevant legislative provisions or applicable case law which we can deal with briefly.

10. Paragraph 45 of Schedule 36 Finance Act 2008 reads as follows:

45 Reasonable excuse

(1) Liability to a penalty under paragraph 39 or 40 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure or the obstruction of an officer of Revenue and Customs.

(2) For the purposes of this paragraph–

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,

(b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and

(c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased."

11. At [47] the FTT identified the relevant three stages of the test in *Perrin v HMRC* [2018] UKUT 156 TCC at [81]:

(1) Establish the facts being asserted as providing a reasonable excuse **(discussed in the FTT Decision at [49]),**

(2) Decide whether these facts are proven **(discussed in the FTT Decision at [52] by reference to the background facts set out earlier at [3] – [33]), and**

(3) Assess whether the proven facts are sufficient to amount to a reasonable excuse, viewed objectively (**discussed in the FTT Decision at [53] – [66]).**

12. At [48] the FTT noted the guidance set out in *Perrin* at [71] that:

> "In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times".

PERMISSION TO APPEAL

13. By a decision dated 19 November 2024 ("the PTA Decision"), the FTT refused the Appellants' permission to appeal the FTT's Decision to the Upper Tribunal ('UT') on the six grounds of appeal pursued. The application was renewed to the UT on 19 December 2024.

14. On 20 March 2025 the UT refused permission to appeal on grounds 1-5 but granted permission on ground 6 which related to the quantum of the penalties.

15. The Appellants renewed their application in respect of ground 5 only at an oral hearing on 14 May 2025, which was granted.

THE FTT'S DECISION IN OUTLINE

16. It was argued before the FTT that the Appellants each had a reasonable excuse on the basis that they had relied on legal advice (see [3] above).

17. The FTT considered whether the facts as found amounted to a reasonable excuse, viewed objectively. In rejecting the Appellants' case, the FTT set out its reasons as follows (at [54], [62] – [66]):

> 18. Whilst a taxpayer is not required to second-guess their adviser, or to obtain multiple opinions, it is clear that they are required to take reasonable care in relying on their adviser. There was no evidence in this case that the appellants took such reasonable care: they took at face value what LD were saying in their emails throughout 2018 and 2019 and did not ask (for example) for copies of the correspondence being sent to HMRC on their behalf. Whilst they might not have thought that they would understand the technical arguments, I consider that in the circumstances of these appeals a reasonable and prudent taxpayer would have wanted to check (at least) what was contained in the correspondence sent to them and that the facts being conveyed to HMRC on their behalf were accurate. This is particularly because most of the emails from LD are very short and lack detail.
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> 62. The advice received by the appellants was also less than clear about what was being done, or what options were available; for example, some of the correspondence in early 2019 does not clearly distinguish between appealing against the Information Notices and appealing against the penalties. I consider that a reasonable and prudent taxpayer would have asked questions to clarify what the advice related to. The appellants also did not question the advice that appealing would potentially validate HMRC's arguments with regard to the Information Notices: it is difficult to see what the purpose of this Tribunal would be if that advice was accurate, and I consider that a reasonable and prudent taxpayer would have asked for more information about that advice.

> 63. Although Mr McCracken emailed LD on some occasions, his emails generally asked whether the advice provided to him (which, as noted, was rather limited) remained the same when HMRC had written directly to him. He did not ask any questions about the advice, or ask for any further explanations, even when LD set out the circumstances in which he had become the scheme administrator for the pension scheme without his knowledge. It was not until December 2019 that he asked any detailed questions. These were about the advice given on the original changes to his pensions scheme some time before the Information Notice was issued and not the advice regarding the Information Notice or the penalties.
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> 64. Mr Hill appears to have asked no detailed questions of LD or IT. He stated in the hearing that he would have telephoned LD, to ask what to do. There was no indication that he asked any questions about what he was told to do.
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> 65. In summary, I conclude from the evidence before me that neither of these appellants took objectively appropriate steps to consider whether it was reasonable to rely on the advisers and the advice provided. They were effectively relying on short emails from LD which largely lacked any particular detail as to what was being said to HMRC on their behalf and did not check the information which was provided to them and some of which was, or would have appeared to be, incorrect.
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> 66. Accordingly, I find that neither of the appellants reasonable care to check that they could rely on the advice being provided in circumstances where I consider that a reasonable and prudent taxpayer would have asked questions given the information being provided to them. Their actions were not those of objectively reasonable reliance on advice; it was closer to reliance on an unchecked assumption that they were being appropriately advised. The appellants stated that they were worried about the risk to their pensions and so relied on the advisers; I consider that in such circumstances a reasonable and prudent taxpayer would have asked questions in order to ensure that the perceived risk was being properly managed.

18. The FTT also found that amount of the initial and daily penalties issued to the Appellants pursuant to paragraphs 39 and 40 Sch 36 FA 2008 was not excessive (see [67]-[87]). The result was that the FTT dismissed the appeals and upheld the penalties in full.

THE GROUNDS OF APPEAL

19. The Appellants appeal with permission from the UT. It alleges that the FTT erred in law in law in its approach to reasonable excuse. The following grounds were pursued before us (as set out in the application for permission to appeal dated 19 December 2024 and renewal application dated 2 April 2025):

> (i) Ground 5 (b) – (e) The FTT's conclusion was based on a misunderstanding of the facts, irrelevant factors and/or outside the reasonable range,
>
> (ii) Ground (5f) The FTT took an erroneous approach to the question of reasonable reliance on an adviser,
>
> (iii) Ground (6) The FTT erred in law in relation to the quantum of the penalties.

20. We should note that in its Decision on Permission to Appeal dated 20 March 2025 the UT stated in relation to PTA Ground 5(a)):

> The FTT's finding as to the Applicants' failure to read the Information Notices in detail on receipt (in January 2018) was not a material part of the FTT's reasons for finding that the Applicants had no reasonable excuse for not complying with them between November 2018 and December 2019. The material parts of the reasoning are [63]-[66] – the conclusion was based on the Applicants' subsequent unreasonable failure to check

> the advice they received and their unreasonable reliance on it with little more when holding the belief that they were entitled not to comply with the notices. Even if, as the ground submits, the findings at [55] were irrelevant to the issues to be decided, the findings could not arguably have played a material part in the conclusions reached.

21. The Appellants in the Renewed Application for Permission to Appeal dated 2 April 2025, noting the UT's comments, confirmed that:

> "…the Appellants confine their grounds of appeal to grounds addressing the material reasoning, as identified by the UT and do not distinguish different periods of time. This document does not, therefore, pursue Grounds 1 – 4 but does pursue Ground 5 to the extent that it relates to the material reasoning."

22. In those circumstances, PTA Ground 5(a) was not pursued, although HMRC addressed the ground for the sake of completeness.

23. The parties addressed PTA Ground 5(f) in the first instance, followed by PTA Grounds 5(b) - (f) which they dealt with together, then PTA Ground 6 and we shall adopt the same approach.

GROUND 1: PTA GROUND 5(F)

24. This ground is that the FTT took an erroneous approach to the question of reasonable reliance on an adviser.

25. Mr Firth submits that it was reasonable for the Appellants to rely on the consistent advice given to them that no action was needed because their pension schemes had been wound up. As a result of the advice, they believed there was no obligation to comply with the information notice and that belief was reasonable. This is consistent with *Perrin* because if a person genuinely believes that there is no obligation to comply with an information notice, and that belief is reasonably held, then those facts amount to "an objectively reasonable excuse for the default".

26. The focus is the reasonableness of holding and acting on the belief and not a generalised appraisal of the reasonableness of the adviser's behaviour across time; conduct of the adviser in relation to separate matters for which advice was given could only be relevant insofar as it made it unreasonable for the taxpayer to rely on the advice which formed the basis of the belief held.

27. The FTT did not reject the Appellants' evidence that the belief was held or that the belief was grounded in advice from their advisers. The FTT's Decision was premised on the Appellants' failure to ask questions/seek explanations about the advice and reliance on unchecked assumptions that they were being properly advised (at [63], [64] and [66]).

28. Mr Firth submits that the correct approach to the issue is that a lay person is reasonably entitled to rely on advice received from a seemingly competent professional adviser, unless there are factors to the knowledge of the recipient of the advice which indicate to him/her that it ought not to be relied upon. He submits that such factors would have to be reasonably obvious, rather than subtle or such as might only be picked up by a fellow professional.

29. In support of his argument, Mr Firth cited a number of authorities. In *Cannon v HMRC* [2017] UKFTT 859 (TC) the FTT said (at [25]):

> "[25] In our judgement when a person seeks appropriate professional advice from somebody who is a professed expert in the applicable discipline, it will almost always be reasonable for the person who has sought out such advice to rely upon that advice provided only that that person has selected a seemingly competent professional adviser, unless there are factors to the knowledge of the recipient of the advice which indicate to him that it ought not to be relied upon. <u>In our judgement such factors would have to</u>

be reasonably obvious rather than subtle or such as might only be picked up by a fellow professional."

(Appellants' emphasis)

30. In *FCA v Forster* [2023] EWHC 1973 (Ch) it was held that Counsel's advice could not be relied upon by a defendant because those opinions "were to his knowledge based on inaccurate assumptions as to the facts of the Qualia business" (at [274(iii)]). In so holding, the High Court explained:

> "[257] The key points here seem to me to be twofold. First, it is absurd to suggest that a lay client should not rely on the advice which he has received as regards the legal analysis which it contains. Provided that he has sought the advice of an appropriate professional, he cannot be criticised for relying on the advice which he has received. Second, however, is that all legal advice is necessarily based on assumed facts. Legal advice cannot take any other form than that "if the facts are X, the conclusion is Y". The lay client cannot be expected to hold any view as to the legal content of such an opinion. However, what he can be expected to do is to consider the statement of facts on which the opinion he has received is based. If that statement of facts does not correspond to the truth as he knows it to be, he cannot rely for any purpose on the advice which he has received, because he knows it to be based on false premises. Where he knows (or should know) that the factual matrix on which the advice given to him is based is incorrect, it is simply not open to him to say that he relied upon that advice.
>
> [258] In this sort of case, the benefit of the doubt should clearly be with the recipient of the opinion – if it is genuinely unclear as to whether the assumed facts of the opinion cover his particular situation, then he is entitled to proceed on the basis that the opinion is correct. However, the mere fact that a legal opinion has been obtained does not, without more, provide a defence of any kind."

31. In *Jacob v Vockrodt* [2007] EWHC 2403 (QB), which was a claim for malicious presentation of a bankruptcy petition, the Court held that "reliance on legal advice can never, on its own, be enough to constitute reasonable and probable cause" (the absence of which is an element of such a claim) but is an important factor in the court's consideration of that issue. The Judge stated (at [41] and [55]):

> "…I consider that this principle operates, whether or not the advice in question can subsequently be criticised as having been negligent, unless it could be shown that the unsuccessful petitioner either knew or should have known that the advice was negligent or that the legal adviser was inexperienced or incompetent.
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> …In accordance with the principle that I have summarised at paragraph 41 above, I find that he acted reasonably in so doing. Thus, even if with hindsight Baker & McKenzie's advice can be criticised, the claimant's reliance upon it cannot. There is nothing to show that the claimant knew or should have known that the advice was – to put it neutrally – open to criticism."

32. Mr Firth relied on the principle in contributory negligence that a lay client is not expected to check/question an adviser's work or correct their error (see Jackson and Powell on Professional Liability, 9th Ed at [5-186] and [11-348]), citing in support *Newline Corporate Name Ltd v Morgan Cole (a firm)* [2007] All ER (D) 191 at [68] – [71] and *Regent Leisuretime Ltd and others v Skerrett and another* [2005] EWHC 2255 (QB) at [67] and [68]:

> "[67] In my judgment, the relevant law on this latter point can be properly stated as follows: (1) in general, a solicitor is entitled to rely upon the advice of counsel properly instructed however, (2) the solicitor must not rely on such advice without exercising his own independent judgement. If he thinks the advice is obviously wrong, it is his duty to reject it; (3) the more specialist the field, the more reasonable it is likely to be for the solicitor to accept and act on it. These three propositions are derived from Locke v

> Camberwell Health Authority [2002] Lloyd's Rep PN 23, 2 Med LR 249, Ridehalgh v Horsefield [1994] Ch 205, [1994] 3 All ER 848. See also Jackson & Powell on Professional Negligence, fifth edition, para 10-118.
>
> [68] Even in a specialist area the court will consider the extent to which it is reasonable to rely on the advice of counsel. For example, the acceptance of poor advice in a specialist field may be reasonable by a solicitor who is inexperienced in the field but unreasonable where the solicitor is also experienced in the specialist field. Equally, however specialised the field, if counsel advises on an egregiously erroneous factual basis, the specialisation of the field is unlikely to assist the solicitor."

33. Mr Firth highlighted that the standard of reasonableness is not a counsel of perfection (see *Moffat v HMRC* [2025] UKFTT 663 (TC) at [110]) and submits that a taxpayer asserting a reasonable excuse is not to be judged by the standard of a particularly meticulous and conscientious taxpayer, in the same way that professionals are not judged by reference to a particularly meticulous and conscientious member of their profession (see *Christie v Mary Ward Legal Centre* [2025] EWHC 330 (KB)) and the fact that it may have been reasonable to do something (e.g. ask questions) in no way indicates that it was unreasonable not to do it (*Nigel Barrett v HMRC* [2015] UKFTT 329 (TC) at [161]).

34. Mr Firth submits that the advice to the Appellants that they did not need to comply with the information notice because the pension schemes had been wound up was advice on a point of technical tax law. He submits that there was nothing obviously wrong with that advice to the Appellants, who could not be expected to hold any view as to the legal content of that advice, and did not know and could not reasonably be expected to know that the advice was incorrect.

35. The FTT's reliance on a failure to ask questions about the advice was erroneous; there was no requirement to question the advice in the absence of any glaring error. Furthermore, the FTT accepted that the Appellants, as lay people, would not have been in a position to consider whether the technical arguments were correct (at [51]). In those circumstances, there would be no point in asking questions, the answers to which would not be understood and the FTT's acceptance that the Appellants did not have the necessary expertise contradicts its finding that failing to ask questions was unreasonable.

36. These errors by the FTT (in particular at [51], [54], [63] – [65]) demonstrate it erred in taking the wrong approach. The FTT should have asked itself whether the Appellants were aware or should reasonably have been aware that there was something obviously wrong with the advice that there was no need to comply with the information notice as the scheme had been wound up.

37. On behalf of HMRC, Ms Blaj noted that the authorities relied on by the Appellants were not cited to the FTT and there can therefore be no criticism of the FTT's failure to refer to them.

38. Moreover, Ms Blaj submitted, the case law cited is not relevant as they concern reliance on barristers, solicitors and accountants who were deemed to be appropriate professionals. In this case, there was no evidence that Liddell Dunbar was a "professed expert in the applicable discipline" or a "seemingly competent professional adviser" (per *Cannon*). To the contrary, the fact that Liddell Dunbar engaged Independent Tax to provide advice demonstrates that they were not appropriate professionals.

39. Similarly, Ms Blaj argued, the Appellants cannot be said to have relied on the advice from Independent Tax as the Appellants did not see the underlying advice provided by Independent Tax to Liddell Dunbar and the Appellants did not receive any direct advice from

Independent Tax until December 2019. In those circumstances, it cannot be said that the Appellants selected a professed expert in the applicable discipline.

40. We did not accept HMRC's argument that the authorities were not applicable in this case as Liddell Dunbar were not appropriate professionals and Independent Tax were instructed indirectly. The FTT clearly accepted as fact that Independent Tax were instructed "to advise LD…and to correspond with HMRC on behalf of the appellants…" (see [5]) and that the Appellants relied on that advice. We see no error in that approach and the appeal proceeded on that basis. We also note the comments of the UT in its decision on the renewed application dated 14 May 2025, that this argument did not form part of the basis nor was it the rationale for the FTT's Decision.

41. Ms Blaj submitted that in considering whether the facts were sufficient to amount to a reasonable excuse, viewed objectively, the FTT applied the correct test as set out in *Perrin.* The FTT took into account unchallenged facts from which it concluded that the Appellants' behaviour fell short of a reasonable excuse.

42. The following findings were open to the FTT in reaching its conclusion that the Appellants did not take reasonable care in relying on their advisers:

> (1) They took at face value what Liddell Dunbar were saying in their emails throughout 2018 and 2019 and did not ask for copies of the correspondence being sent to HMRC on their behalf to check the accuracy of the content [54].
>
> (2) They did not read the information notices they received in any detail [55] – [56].
>
> (3) They did not question particular points raised by the correspondence from Liddell Dunbar, such as why the proposed legal arguments were changing, why the Appellants were being dealt with in a particular category of pension scheme, or why appealing would potentially validate HMRC's argument [57] – [62].
>
> (4) They did not appear to have asked any detailed questions of Liddell Dunbar or Independent Tax [63] – [64].

43. Ms Blaj submitted that the FTT was entitled to find that although the Appellants did not have tax expertise, this did not mean that they should have taken short statements regarding arguments made on their behalf entirely without question (FTT at [59]). As the FTT recognised, this is not the same as "second-guessing" an adviser (FTT at [54]) but amounted to blind reliance on "an unchecked assumption that they were being properly advised" (FTT at [56]). No tax expertise is required to recognise the obvious warnings in the form of repeated penalties and letters in which HMRC clearly stated that the winding up argument was not accepted, to question the advice relied upon or ask more questions about it. The FTT recognised this at [83]:

> "The correspondence between IT and HMRC makes it clear that the same arguments were being repeated over a period of months without change despite the review conclusion letter (for example, in a letter dated 1 August 2019, IT state that "our contentions have not changed since our letter dated 19 December 2018"). The Notice of Appeal for each of these appeals lists the same arguments as those set out in the IT letters of 19 December 2018 and 1 August 2019."

44. We rejected Mr Firth's argument that to accept HMRC's argument is tantamount to saying that if HMRC disagree with the legal/expert advice, it can never be relied upon. As the authorities make clear, the test is not whether that advice is correct or not (and we would say that applies equally to the view taken by HMRC) the question is whether it was reasonable for a taxpayer to rely on the advice.

45. We also found Mr Firth's criticism of the FTT in failing to set out what questions could have been asked misplaced: firstly, it was a matter for each Appellant in exercising their independent judgment and taking reasonable care; and secondly, the FTT decision when read as a whole describes a number of instances in which the FTT considered that a reasonable and prudent taxpayer would have queried matters raised in correspondence from Liddell Dunbar (see for example [56]).

46. The question therefore is whether the Appellants' reliance amounted to a reasonable excuse. Whilst we agree with Mr Firth that the authorities make clear that legal advice or advice from a competent professional can be relied upon, we consider that his interpretation is too narrow and that the authorities also support the proposition that such reliance is not without any responsibility on the taxpayer. By way of example, while *FCA v Forster* held that a lay client cannot be expected to hold a view on the legal content of advice, the Court went further in stating:

> "However, **what he can be expected to do is to consider the statement of facts on which the opinion he has received is based**. If that statement of facts does not correspond to the truth as he knows it to be, he cannot rely for any purpose on the advice which he has received, because he knows it to be based on false premises…. However, the mere fact that a legal opinion has been obtained does not, **without more**, provide a defence of any kind"
>
> (our emphasis)

47. Similarly in *Jakob v Vockrodt*, we consider it implicit in the Court's judgment that in considering whether a taxpayer knew or should have known that the advice was open to criticism/negligent, a relevant factor is the conduct of the claimant in his or her exercising judgement in that regard. Our view is reinforced by *Regent Leisuretime Ltd* in which the Court stated:

> "the solicitor must not rely on such advice **without exercising his own independent judgement**."
>
> (our emphasis)

48. We consider that our reading of the authorities is consistent with para 45 Sch 36 FA 2008, which requires a person to take reasonable care in their reliance on another.

49. Mr Firth noted that the FTT in its reasoning did not conclude that the Appellants should have been aware that there was something obviously wrong with the advice on a technical point of tax law and therefore there was no requirement to question the advice in the absence of any glaring error.

50. We accept Mr Firth's submission that any error in advice must be clear, and the standard of reasonableness is not a counsel of perfection. However, we do not accept the argument that the FTT should have only asked itself whether the Appellants were aware or should reasonably have been aware that there was something obviously wrong with the advice that there was no need to comply with the information notice as the scheme had been wound up. In our view, that reads limitations into the legislation. In order to get to the point at which an error could be identified, we consider that both the legislation and authorities support the proposition that a person must first exercise his own independent judgement which would demonstrate the reasonable care taken in relying on the advice in question. We consider that the legislation encompasses consideration of the level of care shown by a person in relying on advice, not only in selecting the adviser but also their conduct in receiving that advice which forms part of the "relevant circumstances". This seems to us consistent with the guidance of the UT in *Perrin* at [71] (see [12] above).

51. We therefore consider that the FTT was fully entitled to consider and make findings as to the level of care taken by the Appellants in order to assess whether a reasonable excuse existed, and in doing so the FTT followed the guidance of the UT that it should bear in mind "all relevant circumstances". This was the approach adopted by the FTT at [51] and [54]:

> "…However, that lack of technical expertise does not automatically mean that they had a reasonable excuse in their reliance on an adviser; it is a factor which I have taken into account but is not conclusive of a reasonable excuse.
>
> Whilst a taxpayer is not required to second-guess their adviser, or to obtain multiple opinions, it is clear that they are required to take reasonable care in relying on their adviser. There was no evidence in this case that the appellants took such reasonable care…"

52. The FTT heard and read the evidence from which it reached its findings of fact on this issue (see for example [57] – [64]). The FTT applied the facts as found to the test set out in *Perrin*, namely whether the facts were sufficient to amount to a reasonable excuse, viewed objectively.

53. We consider that the findings reached were fully open to the FTT and within the range of reasonable conclusions such that it was entitled to conclude that the Appellants' behaviour fell short of a reasonable excuse in their failure to check or ask questions of the advice and rely on it without a reasonable (or any) basis for their belief that the advice was correct.

Ground 2: The FTT's conclusion was based on misunderstanding the facts, irrelevant factors and/or outside the reasonable range (PTA Ground 5 (b) – (f))

54. This ground relies upon the following:

(i) A clear misunderstanding of the facts in relation to a distinction between schemes based on when they were wound up (PTA Ground 5c).

(ii) Procedurally unfair, illogical and irrelevant findings in relation to a "change of advice" (Ground 5b).

(iii) Failing to give adequate reasons or explanation for the point being made at FTT [62] (Ground 5d) and taking a legally incorrect view about the Appellant's not questioning the advice received (Ground 5e).

(iv) The overall unreasonableness of the conclusion (Ground 5f)

(i) Misunderstanding of the facts

55. There was no dispute that a demonstrable misunderstanding of relevant evidence is an error of law (*Henderson v Foxworth Investments Limited* [2014] UKSC 41) as is a finding that contradicts all the evidence/is not supported by any evidence.

56. Mr Firth argues that the FTT erred at [60] and [61] which read as follows:

> 60. The appellants were subsequently advised that Information Notices had been appealed where the pension scheme in question had not been wound up at the time that the Information Notice was issued:
>
> (1) In July 2019, an email from LD set out an "outline of the current position". This email stated that there were two groups of schemes and states that "schemes which were still active (not yet wound up) at the start of these proceedings" had been appealed to the Tribunal and also that "the majority of the schemes are now wound up". The letter went on to say that "the obligations cease at the time of winding up" in respect of the Information Notice and that "We have emailed [HMRC] to suggest a 6 month stay of Tribunal proceedings while we have the technical debate with [HMRC] on the wound up cases. This would allow us clarify which cases should correctly be heard at Tribunal".

(2) this "two groups" point was repeated, more succinctly, by LD in an email in September 2019.

61. Neither appellant queried why there had been no appeal in their case given that their respective pension schemes had not yet been wound up when the Information Notices were issued. In the hearing, Mr McCracken accepted that he could have checked the information but did not do so, and that it was his mistake not to realise that the Information Notice had been issued before his pension scheme had been wound up, although he noted that this correspondence did not arise until after the scheme had been wound up. Mr Hill's evidence was similar, that he could have checked whether his scheme had been wound up when the Information Notice was sent. I consider that a reasonable and prudent taxpayer would, on receiving this correspondence, check the winding up date of their pension scheme to make sure that it was being dealt with in the appropriate group.

57. Mr Firth argued that the FTT's logic was, therefore, that there were two groups. For one group, appeals had been submitted, for the other group appeals had not been submitted; the difference being whether the pension scheme existed at the time the information notice was issued. The Appellants' schemes existed at the time the information notice was issued and so the notices would be expected to be appealed (but were not).

58. Mr Firth submitted that the July 2019 email does not refer to or suggest that the distinction turned upon the position at the time of the information notice, as the email is headed "Tribunal proceedings". Based on that distinction, there was no doubt that the Appellants were both 'being dealt with in the appropriate group'. It was, therefore, inaccurate for the FTT to state that the September 2019 email repeated the "two groups" point as although it purports to be a 'reminder', it incorrectly refers to the distinction being based on the position at the time of the initial information request.

59. Mr Firth submitted that the July 2019 email would have raised no questions. The September email purported to be a "reminder" and therefore would not have overridden the July email. Even if the Appellants had queried the difference in wording, it was irrelevant as the Appellants were not in the wrong group.

60. The FTT, Mr Firth submitted, erred in taking into account an irrelevant consideration (its misunderstanding of the July 2019 email) and by failing to explain why it was relevant to the issue.

61. Ms Blaj noted that the Appellants' argument is premised on the FTT's "clear misunderstanding of the fact". However, the Appellants have not challenged the Decision on the grounds of *Edwards v Bairstow*. HMRC contend that the FTT's analysis of the emails was correct and the evidence given by the Appellants in relation to the emails was relevant to the issue of reasonable care. It was open to the FTT to reject the Appellant's submission that the September 2019 email contained an error and should have referred to pension schemes wound up when Tribunal proceedings were issued as opposed to when the information notices were issued. There was no contradiction in the emails; the July 2019 email refers to pension schemes "which are now wound up" and says nothing more about timing, and the September 2019 email refers to pension schemes wound up "when the initial information request (Schedule 36 Notices) were issued". In considering the issue, the FTT took into account the Appellants' oral evidence (at [61]).

62. Ms Blaj submitted that the FTT was entitled to draw the conclusion from the evidence that neither Appellant asked any questions to check if they were in the correct group which was a relevant factor to take into account in considering the reasonableness of their conduct.

63. We agree with the submissions on behalf of HMRC. The FTT set out the contents of the emails accurately and, read in context, was doing no more than setting out the unchallenged fact that there were two groups. We do not consider that there was a misunderstanding of the facts; the basis of the FTT's reasoning was derived from the evidence of the Appellants and their acceptance that they had not checked their respective positions. This evidence formed the basis of the FTT's assessment of the relevant circumstances, namely the level of care taken in relying on the advice given.

64. We consider that it was open to the FTT to conclude on the basis of the Appellants' evidence that no/insufficient reasonable care was taken and that this was a relevant consideration in assessing the issue of reasonable excuse.

65. Mr Firth's submission that there was "no doubt" that the Appellants were being dealt with in the appropriate group, is misconceived; from the evidence of the Appellants' failure to check, it was open to the FTT to conclude that insufficient care was taken to establish whether there should have been any doubt. We do not consider the reference to timing (namely the date the information notice was issued) in the email in September 2019 had any material bearing on the FTT's findings of fact.

(ii) Errors in relying on 'change of advice'

66. At [59] the FTT stated:

> "Neither Mr Hill nor Mr McCracken asked why the basis of the advice had apparently changed, nor why a letter addressed to them was not a personal obligation rather than a scheme obligation. Whilst I appreciate that neither has tax expertise, I do not consider that this means that they should take short statements as to the arguments apparently being made on their behalf entirely without question."

67. Mr Firth reiterated his earlier point that whether winding up a pension scheme removes a requirement to comply with an information notice is plainly a technical question of tax law. The FTT's reference to the addition of the argument that because the schemes had been wound up, there was no obligation to comply, amounts to a legal analysis that a lay client is not expected to hold any view on or to be wiser than the professional.

68. Furthermore, the "change of advice" point was not raised at the hearing either in evidence or submissions which is procedurally unfair and illogical given that the Tribunal was comparing a time before the scheme was wound up (February 2018), when the argument could not be made, with a time after the scheme was wound up (November 2018). The addition of an argument cannot form the basis for concluding that the advice received could not be relied on.

69. Ms Blaj submitted that the FTT was entitled to conclude that although neither Appellant had tax expertise, this did not mean that they should have taken short statements as to the arguments made on their behalf entirely without question (FTT at [59]) and it was open to the FTT to take into account that neither Appellant questioned why there was a change in approach or why the winding-up of the schemes removed any obligation to comply with the information notice.

70. Ms Blaj submitted there was no unfairness in the FTT's consideration of this issue as it was not a case where the Appellants' evidence was disbelieved or challenged and the point needed to be put; there was no evidence that the Appellants had asked questions, which is unsurprising as their case was that they entirely relied on their advisers. Similarly, the FTT's conclusion is not illogical; it demonstrated the fact that the Appellants failed to cast a critical eye over correspondence they received from their advisers.

71. We agreed with the submissions on behalf of HMRC. The FTT's findings must be read alongside the preceding paragraphs which show that the change in advice formed part of the documentary evidence before the FTT which was not in dispute:

> "57. There were also some particular points raised by the advice which was conveyed which I consider that a reasonable and prudent taxpayer would have queried:
>
> (1) The first communication, in February 2018, stated that IT had advised that HMRC had no legal right to request the information although no further details as to why they advised this were provided or requested.
>
> (2) Following the review, in November 2018, LD stated that IT's view was that, as the schemes had been wound up, there should be no need to respond to the review conclusion letter, which had varied rather than quashed the Information Notice request.
>
> 58. No explanation was given to the appellants as to why the initial argument that there was no legal right to request the information was apparently not being pursued further (although IT continued to refer to it in their unchanging summary of their position in correspondence with HMRC). No explanation was given as to how the winding up of the scheme, after the issue of an information notice to an individual, might remove a requirement on the individual to comply with that Information Notice.

72. We consider that these were matters that the FTT was entitled to take into account. These factors were relevant to the FTT's consideration of the circumstances of the case in assessing whether the Appellants' reliance on advice was reasonable. The findings that no tax expertise was required to clarify why the advice had changed and that the Appellants did not seek any explanation or clarification were findings which was open to the FTT to make on the evidence.

(iii) The point at FTT [62]

73. FTT [62] reads:

> "The advice received by the appellants was also less than clear about what was being done, or what options were available; for example, some of the correspondence in early 2019 does not clearly distinguish between appealing against the Information Notices and appealing against the penalties. I consider that a reasonable and prudent taxpayer would have asked questions to clarify what the advice related to. The appellants also did not question the advice that appealing would potentially validate HMRC's arguments with regard to the Information Notices: it is difficult to see what the purpose of this Tribunal would be if that advice was accurate, and I consider that a reasonable and prudent taxpayer would have asked for more information about that advice."

74. Mr Firth argues that the FTT failed to explain what the "correspondence in early 2019" was or how it did not "clearly distinguish" between appealing the information notices and the penalties. Furthermore, the FTT's finding that the Appellants' failure to question the advice that appealing may validate HMRC's arguments was a matter for legal analysis which the Appellants were not required to question.

75. HMRC submitted that it is obvious which correspondence the FTT was referring to as the Appellants only received four emails from Liddell Dunbar in early 2019. It is equally clear what the FTT meant in stating that some of the correspondence made no distinction between appealing the information notices and appealing the penalties as the emails dated 31 March 2019 and 2 April 2019 refer to making appeals but do not specify what is to be appealed.

76. We accept HMRC's submissions. The FTT read the advice received by the Appellants and its reference to correspondence in early 2019 was a reference to documents contained in the hearing bundle which the FTT was entitled to take into account. We accept HMRC's submission that given the limited number of documents the reference could relate to, the FTT's Decision was clear in that regard. Similarly, we consider it is plain from the FTT's description where it stated the documents did not clearly distinguish between appealing the information notices and appealing the penalties, the correspondence had simply referred to appeals. We also consider that the finding that a reasonable taxpayer would not simply have accepted the advice blindly was one within a reasonable range and which was open to the FTT on the evidence before it. We do not accept there is any error of law in this regard.

(iv) Overall reasonableness

77. The fundamental issue was whether it was reasonable for the Appellants to rely on the advice received that they did not need to comply with the information notice because the pension scheme had been wound up.

78. Mr Firth argues that this was self-evidently a technical matter of tax law on which the Appellants could not be expected to form any view. The FTT fails to identify any questions that they could reasonably be expected to have asked and which, if asked, would have undermined the reasonableness of relying on the advice. The FTT acknowledges at [51] that the advice involved technical arguments and consequently its conclusions fell outside the reasonable range.

79. As the FTT's wider reasoning is based on one or more errors of law, it cannot be said that the decision would have been the same but for those errors.

80. HMRC submit that the Appellants have framed their appeal as errors of law, but in substance it is an attack on the FTT's findings of fact in circumstances where there has been no *Edwards v Bairstow* challenge.

81. We have addressed the Appellants' criticism that the FTT fails to identify any questions that could reasonably be expected to have been asked above at [82] and we find no error of law in that regard.

82. We reject the Appellants' argument that the FTT should have identified questions which, if asked, would have undermined the reasonableness of relying on the advice. That is not the test, as the FTT recognised at [52]:

> "Whilst a taxpayer is not required to second-guess their adviser, or to obtain multiple opinions, it is clear that they are required to take reasonable care in relying on their adviser."

83. The test is whether the Appellants' reliance on the advice was reasonable in all of the circumstances and whether reasonable care was taken in so doing. It was open to the FTT to conclude that the Appellants' failure to ask questions about the advice and to rely on it with no basis upon which to ground their belief that they did not need to comply with the information notice was unreasonable.

GROUND 3 QUANTUM (PTA GROUND 6)

84. Mr Firth argues that the FTT refers to the Appellants' reasons why this was at the lower end of the seriousness scale at but fails to address almost all of them. At [78]:

> "The non-compliance was described, on behalf of the appellants" as being not a "most serious" case as there was no flagrant disregard of the notices; the appellants were following professional advice, even if that advice was incorrect. Further, the Information Notices were eventually complied with but HMRC had taken no further action after receiving the information. It was therefore contended that this was not a

> situation where the non-compliance was attempting to hide substantial tax liabilities. It was contended that the amount of the penalties here leaves no scope for penalise more serious cases."

85. At [79] the FTT rejects the argument that this should not be treated as being at the top of the seriousness scale because that would leave no room for more serious cases and does so on the basis of Schedule 36, para 49A, clearly believing that that paragraph could apply to a paragraph 1 information notice (see also [87]).

86. This was not an argument relied on by HMRC and, as Mr Firth submitted, is wrong. Paragraph 49A only applies to notices under paragraph 5 (i.e. person unknown notices).

87. Mr Firth submits that the FTT's consideration of the quantum issue is based on a clear error of law and it cannot be said that the decision "would" have been the same but for this error of law. Furthermore, the FTT failed to consider the seriousness with reference to the Appellants' behaviour and instead considered the adviser's evidence without relating it back to the seriousness of the Appellants' conduct. Thus, the FTT erred in considering that the evidence of the adviser was included "where relevant with regard to the quantum of the penalties" (see [45]).

88. Ms Blaj highlighted that, in refusing permission to appeal, the FTT confirmed that the incorrect reference to para 49A Sch 36 FA 2008 did not form part of the Decision in relation to quantum, rather the decision was made on the basis of the evidence set out at [83] – [87].

89. HMRC contend that the FTT was entitled to reject the Appellants submissions as to the seriousness of the conduct and applied the correct test by considering both the Appellants' and adviser's conduct. The latter was plainly relevant given the Appellants' reliance on their adviser which cannot absolve a taxpayer of responsibility.

90. There was no dispute that if an error "may" have made a difference, the decision should be set aside (per (*HMRC v. Currell* [2026] EWCA Civ 445, Falk LJ)

> "[44] Having concluded that the UT did not err in setting aside and deciding to re-make the FTT's decision, the role of this court is to determine whether the UT made an error of law in the course of re-making the decision: see section 14(1) TCEA. If the UT has not erred in law then we have no power to set its decision aside. If the UT has made an error of law then we have a discretion to do so under section 14(2)(a). In the same way as Henderson LJ observed in *Degorce* at [95] in relation to the powers of the UT under section 12 TCEA, immaterial errors that could not have made a difference will not justify the exercise of the discretion, because there will have been no injustice. In contrast, a material error, in the sense of one that may have made a difference, will normally require that jurisdiction to be exercised."

91. Whilst we did not disagree with the FTT's reasoning for the most part, that is not the test we must apply. As stated in *HMRC v. Basic Broadcasting Limited* [2024] UKUT 165 (TCC):

> "The FTT's conclusion depended on the way it framed and approached the question, and Atholl House CA tells us that the way it framed and approached the question was flawed in important respects."

92. We agree with Mr Firth on behalf of the Appellants. At [79] the FTT concluded on the Appellants' submissions regarding seriousness:

> "I do not consider that this argument is sustainable; there is provision in Schedule 36 (paragraph 49A, introduced with effect from April 2012) for HMRC to apply to the Tribunal for daily penalties to be imposed of up to £1,000 per day for failure to comply with information notices. Whilst £60 per day may, therefore, be the maximum that HMRC can impose without application to the Tribunal, it is not correct to say that there is no scope to charge higher penalties in more serious cases."

93. We consider that there was an error of law in the way the FTT framed and approached the question of seriousness. We take the view that the error may have made a difference and we therefore allow the appeal on this ground.

CONCLUSION

94. For the reasons given above we allow the appeal in part.

95. We dismiss the appeal on grounds 1 and 2 (PTA grounds 5(f) and 5(a) – (e)). We consider that the FTT made findings it was entitled to make, that it applied those facts to the correct test and that the Decision was one which fell within a reasonable range that was open to it.

96. We consider the FTT erred in respect of ground 3 (PTA ground 6) in approaching the Decision with reference to para 49A Sch 36 FA 2008 which was not applicable to the facts of this appeal.

97. The parties are directed to provide submissions within 21 days as to whether the issue of quantum of the penalties under ground 3 should be remitted to the FTT or remade by the UT.

NICHOLAS ALEKSANDER JENNIFER DEAN

UPPER TRIBUNAL JUDGES

Release date: 07 August 2026