

Neutral Citation: **[2026] UKUT 00438 (TCC)**

Case Number: UT/2024/000146

UPPER TRIBUNAL
Tax and Chancery Chamber

Decided on the papers

Information Notices – decision on penalties following written submissions

Judgment date:

Before

JUDGE NICHOLAS ALEKSANDER
JUDGE JENNIFER DEAN

Between

DAVID HILL
DAVID MCCRACKEN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

DECISION

INTRODUCTION

1. On 7 August 2026 we released our decision in principle in this appeal. We dismissed the appeal on grounds 1 and 2 (that the FTT took an erroneous approach to the question of reasonable reliance on an advisor, and that the FTT's decision was based on a misunderstanding of the facts, irrelevant factors and outside the reasonable range). We found 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.

2. However, we found that the FTT erred in respect of ground 3 (quantum of penalties) in approaching the Decision with reference to para 49A Sch 36 FA 2008 which was not applicable to the facts of this appeal.

3. We invited the parties to submit their written submissions within 21 days as to whether the issue of quantum of penalties should be remitted to the FTT or be remade by us.

4. The Appellant failed to file its submissions within the relevant time (which was extended), however HMRC wrote to the Tribunal stating that in the interests of dealing with the issues efficiently, they did not object to the Tribunal considering the late submissions.

5. This decision therefore takes into account both the submissions of HMRC filed on 1 September 2026 and the Appellants' submissions filed on 23 September 2026.

6. Both the Appellants and HMRC submit that the decision on quantum of penalties should not be remitted to the FTT, but instead we should remake the decision. HMRC submit that we have all the relevant material before it that we need to remake the decision and that is not necessary to incur the cost and delay of remitting the case to the FTT particularly when it is unclear what could be gained by having the same papers put before a different Judge. As a result, HMRC submit that it would be in the interests of justice and in furtherance of the overriding objective for the decision on quantum to be remade. The Appellants submit that we should remake the decision on quantum. We agree with the submissions of the parties and have decided to set aside the decision of the FTT on quantum and remake it.

7. In summary, the Appellants were issued with three tranches of daily penalties. The first at £30 per day (after approximately three months of non-compliance with the information notices), the second at £60 per day (issued after approximately seven and a half months of non-compliance), and the third at £60 per day (issued after approximately 13 months of non-compliance).

SUBMISSIONS

8. HMRC submit that the quantum of penalties should be maintained at £30 per day for the first tranche and £60 per day for the subsequent tranches. HMRC submit that this remains appropriate for the following reasons:

(1) The information notices requested 13 items. The Appellants complied with none of them by this time.

(2) By this point, the Appellants had been given adequate warning in the £300 penalty notices issued 2 months earlier that continued non-compliance could trigger further penalties of up to £60 per day.

(3) Despite the warning being stated in the £300 penalty notice letters addressed directly to the Appellants, they still chose not to respond to HMRC or ensure compliance with the information notices. This can be contrasted with the behaviour of other taxpayers in a similar position to the Appellants who did reach out to HMRC.

(4) Officer Fulwood's evidence was clear as to why it was felt that £30 was appropriate, namely, that as pension scheme administrators the Appellants' non-compliance was serious and restricted HMRC in performing its function and carrying out its duties; HMRC were aware that no appeal had yet been made to the FTT against the information notices; and Independent Tax were handling a number of related enquiries and had been aware of HMRC's enquiries for a significant time

(5) The clear policy intent of a daily penalty regime is to encourage compliance with the information notice (see *Cotswold Financial Planning Ltd v HMRC* [2021] UKFTT 198 (TC) at [90]). Nonetheless, as this was the initial period of non-compliance (3 months), it is appropriate for the quantum to reflect that.

(6) In relation to the second and third tranches of penalties at £60 per day, being the maximum amount, HMRC submit that these were appropriate in light of the continuing non-compliance with the information notices. The Appellants submit that the £60 penalty should only apply in the most serious cases of non-compliance. HMRC submit that this is such a case given that the Appellants repeatedly ignored direct communications from HMRC over an unacceptably long period of time (7.5 months of non-compliance before the second tranche and 13 months before the third tranche), in respect of a large number of information requests (13 items), despite having already incurred daily penalties at a lower rate. There had not even been any partial compliance by the Appellants at the time of the second and third tranches.

9. The Appellants submit that the quantum of the daily penalties should be reduced to take account of the fact that they were relying on their advisors. Whilst the Appellants accept that reliance in the circumstances of these appeals did not amount to a reasonable excuse, they submit that it should still be taken into account when considering the quantum of penalties. Further the fact that 13 requests for information were outstanding does not mean that there were 13 separate instances of serious or deliberate non-compliance. Similarly, the passage of time should not be treated as establishing that the maximum penalty of £60 per day was required. The statutory purpose of the penalties was to encourage compliance rather than punish the taxpayer indefinitely. The Appellants submit that the daily penalties of £30 and subsequently £60 are excessive having regard to the totality of the circumstances and in particular, the escalation to £60 per day requires justification beyond the mere fact that the earlier penalty did not result in immediate compliance. The Appellants previously submitted to the First-tier Tribunal that a penalty of £10 per day would be appropriate. They maintain that position. A penalty of £10 per day would recognise the Appellants' failure to comply with the information notices, while properly taking into account the mitigating circumstances, the absence of any finding of deliberate obstruction, and the fact of eventual compliance.

DISCUSSION

10. We note 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 its decision in relation to quantum, rather the decision was made on the basis of the evidence set out at [83] – [87]. Given that the FTT had heard all the evidence, we place considerable weight on this factor.

11. However, we consider that there should be some reduction in the level of the penalties to recognise the reliance of the Appellants on their advisors - notwithstanding that such reliance did not amount to a reasonable excuse justifying the elimination of penalties altogether. We consider in all the circumstances that the second tranche of penalties should be reduced to £30 per day. The first and second tranches should be £30 per day and the third tranche £60 per day, as by that time the Appellants ought to have realised that they needed to reassess the advice

that they were being given. We set aside the decision of the FTT on quantum and remake it accordingly.

12. We direct that HMRC recalculate the penalties on this basis and serve their calculation on the Appellants within 21 days of the release of this decision, with a view to the parties agreeing the quantum of the penalties. In the event that the parties are unable to reach agreement on quantum, they have liberty to apply to the Tribunal to settle the amount.

13. We note that the Appellants in their submissions have submitted that the Tribunal should make no order for costs. In correspondence with the parties, we notified them that time limit for filing any application for costs would only commence with the release of our decision on quantum, so the time for filing any such application runs from the release of this decision. In the event that HMRC make an application for costs, the Appellants will have an opportunity to respond to that application.

NICHOLAS ALEKSANDER JENNIFER DEAN

UPPER TRIBUNAL JUDGES

Release date: 09 November 2026