[2016] UKUT 41 (TCC)

Reference numbers: FS/2014/0012
FS/2014/0013
FS/2014/0016

PROCEDURE – application for a "split trial" – application for specific disclosure

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

(1) STEWART OWEN FORD
(2) MARK JOHN OWEN
(3) PETER FRANCIS JOHNSON **Applicants**

- and -

THE FINANCIAL CONDUCT AUTHORITY **Respondent**

TRIBUNAL: JUDGE ROGER BERNER

Sitting in public at The Royal Courts of Justice, Strand, London WC2 on 14 January 2016

The First and Second Applicants, Mr Ford and Mr Owen, appeared in person

Farhaz Khan and Simon Oakes, instructed by Clifford Chance, for the Third Applicant, Mr Johnson

Andrew George QC and Daniel Burgess, instructed by The Financial Conduct Authority, for the Respondent

DECISION

1. In the course of a case management hearing on 14 January 2016, at which I made various directions for the future conduct of the references made by the three applicants, I determined two particular applications in respect of which I said that I would provide my reasons separately. These are my reasons.

Background

2. The background to the applicants' references is very shortly summarised in my decision ("the privacy decision"), which is published under the citation [2015] UKUT 0220 (TCC), refusing certain privacy applications made by the applicants. I need not repeat that general introduction here, save to say that, put very shortly, the references concern Decision Notices issued by the Authority to each of the applicants concerning their conduct whilst directors, in the case of Mr Ford and Mr Owen, and in the case of Mr Johnson as compliance officer, of Keydata Investment Services Limited ("Keydata"). Keydata was involved with certain investment products underpinned by bonds issued by two special purpose vehicles incorporated in Luxembourg, SLS Capital SA ("SLS") and Lifemark SA ("Lifemark"). The Luxembourg regulator (the CSSF) closed Lifemark to new business in mid-2009, and it was put into liquidation on 11 May 2012. Keydata ceased trading in June 2009 and went into administration. The circumstances of those closures are, as I shall describe, highly contentious. Keydata has subsequently been dissolved on 2 July 2014.

3. During the relevant period of 26 July 2005 to 8 June 2009, more than 37,000 investors purchased the relevant investment products, investing over £475 million. The Financial Services Compensation Scheme ("FSCS") has subsequently made payments to investors of over £330 million.

4. The Decision Notices, which are now the subject of these references, record the findings of the Authority that each of the applicants was in breach of Statements of Principle 1 (integrity) and 4 (relations with regulators) and that each applicant was not a fit and proper person to perform functions in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. Each applicant was made the subject of a prohibition order and a financial penalty was imposed, on Mr Ford of £75 million, on Mr Owen £4 million and on Mr Johnson £200,000.

5. Following the references to the Tribunal, the Authority served statements of case on each of the applicants. In each case the Authority refers, in the summary of its case, to the amounts invested in the investment products and the FSCS compensation and the level of consumer detriment which the Authority says has arisen from the sales of the investment products and to the impact which this level of consumer detriment has had on the financial services sector. The failings of the applicants are considered by the Authority to be of the most serious nature. The amount of the investor loss, and the view of the Authority that the breaches are of a

serious nature, are referred to as factors in determining, according to its policy, the imposition of financial penalties in each case.

6. The references of Mr Ford and Mr Owen remain unchanged. That of Mr Johnson has, however, narrowed considerably as a consequence of amendments to his reference and reply to the Authority's statement of case, to which the Authority consented and which have been approved by the Tribunal. Mr Johnson now accepts that his conduct during the relevant period fell below the standard to be expected of him as a compliance officer and has conceded that his conduct reflected a lack of experience and professional judgment. He largely accepts the facts and matters alleged by the Authority in the statement of case. However, he denies that he failed to act with integrity and that he deliberately misled the Authority. Mr Johnson does not now seek to challenge the Authority's decision to subject him to a prohibition order, but he does seek to challenge the level of the financial penalty in his case.

7. I referred in the privacy decision to a proposed action which at that time was intended to be brought by the applicants against the Authority and others. A pre-action letter had been sent to the Authority by Mr Ford in July 2014 making substantial claims against it, on the basis, it was claimed, that the Authority had an ulterior motive in its interventions in respect of Keydata and Lifemark and its investigation into Mr Ford's conduct and that the Authority's actions were *ultra vires* and had caused loss to investors, shareholders, creditors and employees of Keydata.

8. On 5 June 2015 a claim was issued in the High Court by AAI Consulting Ltd, expressed to be an assignee of Mr Ford, a number of companies associated with the Lifemark arrangements, Mr Owen and Mr Johnson and one other individual. Prior to service, however, Mr Johnson and the other individual ceased to be claimants. The claim is against the Authority, PricewaterhouseCoopers LLP ("PwC"), who in 2009 prepared, on instruction from the Authority, a solvency report in respect of Keydata, and who were subsequently appointed administrators of the company, and Mr Dan Schwarzmann, a member or partner of PwC.

9. In very broad summary, the claimants in the High Court proceedings ("the misfeasance proceedings") allege:

(1) that the Authority acted unlawfully in that it had an ulterior motive for its interventions in respect of Keydata and thereafter Lifemark and its investigation into Mr Ford's conduct, in that the actions of the Authority and its investigation team were to pursue a political agenda in the wake of the 2008 financial crisis;

(2) that the unlawful acts involved deliberate acts and/or omissions which were wrongful and which represented an abuse of, and misfeasance in, public office, and that the Authority acted in bad faith;

(3) that PwC owed a duty of care to both Keydata and the claimants in respect of the solvency review and is in breach of that duty of care, amongst other things because it was aware that the purpose of the solvency review was to show that Keydata was insolvent so as to enable the Authority to bring Keydata down, but it is claimed, Keydata was not insolvent;

(4) that PwC and Mr Schwarzmann were in breach of duty as prospective administrator in a number of respects, including a failure to seek to extend the scope of PwC's instructions, a failure adequately to consider post balance sheet events, and finding that Keydata was balance sheet insolvent; and

(5) that the defendants conspired together to injure Mr Ford and the other claimants by ensuring that Keydata was forced out of business following the production of the solvency review.

10. The misfeasance claim is for £462 million, plus interest.

11. At the date of the hearing before me, no defence to the misfeasance proceedings had been served by the Authority, although I was informed that it was due to be served on 29 January 2016. I was also informed that both the Authority and PwC and Mr Schwarzmann are considering making applications to strike out the claim, or for summary judgment. No such applications had been made at the time of the hearing before me.

12. The claimants have sought the agreement of the Authority to a stay of the misfeasance proceedings on the ground that, as described in a letter dated 3 December 2015 from Rollingsons Solicitors Limited ("Rollingsons"), the solicitors acting for the claimants in those proceedings, the Authority's conduct in relation to the closing down of the business is "at the very root of" the Tribunal proceedings, and that:

> "… it is plainly wrong for the FCA to assert that the subject matter of the disciplinary proceedings is different to the [misfeasance proceedings]. In fact, the overlap is complete. The conduct of the FCA and, in particular, the catastrophic effects of its ill-judged interventions will be central to the Upper Tribunal's review of the regulatory process. The issues to be determined by the Upper Tribunal and the evidence which Mr Ford will introduce in relation to these issues will be duplicated entirely in the [misfeasance proceedings]. The extent of the overlap is both obvious and unavoidable."

13. The Authority has refused to agree to a stay of the misfeasance proceedings.

The Authority's application for a split trial

14. The Authority takes the position that, apart from what it says is the peripheral relevance of the issue of what caused the failure of Keydata to the question of what penalty would be appropriate in the event the applicants are found by the Tribunal to have committed misconduct, the question whether the Authority brought about that failure is entirely irrelevant to the question whether the applicants were guilty of misconduct. Nonetheless it identifies two problems with the references proceeding as a single hearing which, it argues, militate in favour of a split trial, first of the misconduct issues and secondly, to the extent relevant, of the penalty.

Parallel misfeasance proceedings

15. The first issue is that it is submitted that the proposed separation would minimise the risk of duplication between these proceedings and the misfeasance proceedings. The basis of the misfeasance proceedings is the allegation that the Authority was the cause of the failure of Keydata. Mr Ford has made clear that he intends to make the same case to this Tribunal. This, Mr George submitted, gave rise to a *prima facie* risk of duplication, a potential for inconsistent judgments and duplication of costs and court time. There was also, argued Mr George, a risk of issue estoppel.

16. As to the legal principles to be applied on an application of this nature, Mr George referred me to one of my own decisions in the First-tier Tribunal (Tax Chamber), namely *HT & Co (Drinks) Limited v Revenue and Customs Commissioners* [2015] UKFTT 0663 (TC), where in the context of an application for a stay of tribunal proceedings pending a judicial review, where there was some overlap in the respective proceedings, I reviewed the relevant authorities and said, at [31]:

> "The cases indicate that as a matter of principle, first, proceedings in which the same issues or questions fall in substance to be determined should not be permitted to proceed in parallel. Secondly, in principle proceedings in one court should not be determined if there is a realistic prospect that the matter decided would be moot, because the issue would become immaterial as a consequence of a decision of another court. Finally, those principles are founded upon the interests of justice, which will therefore fall to be applied in any case where the question whether to adjourn or stay is not determined as a matter of principle."

17. Although the Authority's application is expressed as one for a "split trial", I prefer the analysis put forward by Mr Khan, appearing for Mr Johnson, that it is in substance an application for the issue of the appropriate penalty to be stayed pending determination of the misfeasance proceedings. It is on that basis that the Authority's application falls to be considered.

18. Each of the applicants opposes the application. Mr Ford and Mr Owen argue that the submission of the Authority that, because it is the conduct of the applicants that has been under investigation, and not that of the Authority's enforcement team, none of the evidence as to the causes of the failure of Keydata, SLS and Lifemark is relevant to the determination of misconduct is wrong. They say that it is central to their case that the investment products in question were not "high risk" or "toxic", and that they should not be denied the opportunity of adducing evidence of the factual background, including the actual causes of the failure of SLS and Lifemark. In addition, Mr Ford and Mr Owen submit that at a single trial of the references they will have the opportunity to put evidence before the Tribunal to show that the failure of the SLS bonds was due entirely to a fraud of other persons and that the failure of Lifemark was due to the Authority's intervention.

19. It is thus the position of Mr Ford and Mr Owen that the issues of misconduct and the true causes of the consumer detriment which followed the failure of SLS and

Lifemark are "inextricably intertwined", and that a split trial, in which the issues identified by Mr Ford and Mr Owen would, as they put it, be considered in a factual vacuum, would be an injustice.

20. Mr Johnson's position on his references now being different from that of Mr Ford and Mr Owen, his arguments against a split trial were put somewhat differently. Mr Khan argued that as a matter of basic approach it is desirable that there be a single trial of all the issues. The distinction sought to be drawn between the misconduct element of the Tribunal proceedings, and that of the penalty, it was submitted, is an artificial one; it is apparent from the way the Authority has put its case against Mr Johnson that the penalty is based on the nature and seriousness of the alleged misconduct. A clean split would be particularly elusive in Mr Johnson's case, where the financial penalty is a function of the nature and seriousness of the misconduct, and the only remaining question in that regard in relation to Mr Johnson is whether the nature and seriousness of the misconduct amounts to a lack of integrity.

21. Mr Khan argued that the overlap between the Tribunal proceedings and the misfeasance proceedings was limited, even on the Authority's own case. The cause of the demise of Keydata is no more than background to Mr Johnson's reference; the Tribunal is concerned with Mr Johnson's alleged misconduct and not with the various reasons why Keydata, in the end, failed. Consumer detriment is relevant to the penalty question, but that relevance is of a secondary order to determination of the seriousness of the alleged misconduct. Mr Johnson does not in any event dispute the fact or seriousness of the consumer detriment.

22. In my judgment it is clear that the Authority's application for a split trial must fail. I do not accept that there is any overlap between these proceedings and the misfeasance proceedings such as would justify a stay of any element of these proceedings. Although Mr Ford, and through him Mr Owen, have made clear their wish to introduce evidence into the Tribunal proceedings as to the conduct of the Authority in relation to the failure of SLS and Lifemark in particular, that conduct can have no relevance to the consideration in these proceedings of the conduct of the applicants themselves.

23. I do not accept, which was argued by Mr Ford, that the central question for this Tribunal is the conduct of the Authority. That conduct, the reasons why certain actions were taken by the Authority and the Authority's motivation in those respects, will be front and centre of the misfeasance proceedings, and form part of the issues to be determined in those proceedings. By contrast, in these proceedings on the applicants' references, the Tribunal is concerned with making a determination with respect to the conduct of each applicant.

24. Furthermore, there is in my view no proper basis on which the Tribunal should make a determination as to the misconduct of the applicants without an essential element of the seriousness of that misconduct being determined. The bifurcation suggested by the Authority as a solution to a perceived problem of overlap is, in my judgment, an artificial one which is unworkable in the context of the overriding objective to deal with cases fairly and justly.

25. The overlap, to the extent there would be any, is said by the Authority to be confined to the question of consumer detriment. I accept in that regard that the Tribunal will be called upon to decide whether the loss to consumers was, as the Authority will argue, the result of the circumstances created by the misconduct of the applicants, or as Mr Ford and Mr Owen will say caused by others, including the alleged fraudsters and the intervention of the Authority to close down the business. But the issue before the Tribunal in that regard will not be the lawfulness of the Authority's actions, or the propriety or otherwise of the Authority's purpose, or any question of breach of duty or conspiracy. Those are matters confined to the misfeasance proceedings. The Tribunal will make findings, on the other hand, as to the risk profile of the investment products, the conduct of the applicants in that context, the causes of the failure of SLS and Lifemark, including the effect of the activities of third parties and the reasons why consumer detriment was suffered. Those are issues that can be determined without findings being required to be made on the issues before the High Court.

26. There is thus, in my judgment, no reason in principle why the penalty issue should not proceed, as part of the Tribunal proceedings, alongside parallel misfeasance proceedings. I do not accept, as Mr George argued, that there is any material risk of issue estoppel which could adversely affect the misfeasance proceedings. The issues are different, and those on which the Tribunal might be expected to make findings are unlikely, in my view, to preclude the High Court from making its own findings on the issues which are the subject of those proceedings. In any event, to the extent that any issue estoppel would arise, that would essentially be to prevent an abuse of process. It cannot therefore be a reason to inhibit the Tribunal from making any determination which will require to be made to do justice to the parties in its own proceedings.

27. Absent an overlap in principle which would tend towards an appropriate stay, it is clear to me that the interests of justice will be met in this case by all issues being determined by the Tribunal in a single set of proceedings, and that they would not be met by staying the penalty element of those proceedings, so as to exclude consideration of consumer detriment pending determination of the misfeasance proceedings. It would in my judgment be inimical to the interests of justice for there to be a finding, in respect of any of the applicants, that there was misconduct, but that the seriousness, and ultimately the nature, of that misconduct could not finally be determined until different proceedings (in respect of which different parties are concerned, and in particular Mr Johnson is not) had been resolved.

Expediency of a single or split trial

28. The second issue identified by the Authority as supporting a split trial was that such a trial would minimise the risk that the hearing would become swamped with matters that are irrelevant to the issues that the Tribunal is required to determine. For essentially the same reasons I have outlined above, I do not accept that there is any material risk of that happening. In my judgment the proper response to a risk of these proceedings, or any element of them, being swamped by irrelevant matters is appropriate case management.

29. I do not accept that there is any discernable principle whereby proceedings in this Tribunal might as a general rule be dealt with by means of a split trial, at least one in which one element of the proceedings is stayed pending determination of other proceedings. The examples to which Mr George referred me, such as *Chhabra v The Financial Services Authority* (2009) in the Financial Services and Markets Tribunal, are simply examples of cases where, having regard to the facts of those cases it was either agreed, or the Tribunal ordered, that the issue of liability be heard first as a separate issue and that any issues as to penalty would be heard later. That is certainly a convenient course which might be adopted in order that submissions on penalty issues might be tailored to the substantive findings of the Tribunal as to the conduct in question. But it does not suggest that part of the question of the nature and seriousness of any misconduct should be left undetermined until a separate hearing, and accordingly does not support the kind of bifurcation sought by the Authority in this case.

30. If the question whether to order a split trial is considered as one purely of case management of the hearing itself, I accept that the approach is essentially a pragmatic one (see *Electrical Waste Recycling Group Limited and another v Philips Electronics UK Limited and others* [2012] EWHC 38 (Ch), per Hildyard J at [5]). Mr George referred me to a number of the competing considerations identified by Hildyard J, including whether a single trial to deal with both liability and quantum will lead to excessive complexity and diffusion of issues or place an undue burden on the tribunal, whether there are difficulties in defining an appropriate split or whether a clean split is possible and generally what is perceived to offer the best course to ensure that the whole matter is adjudicated as fairly, quickly and efficiently as possible.

31. In my judgment, there is no clean split between the issues of misconduct and those of penalty, at least not the split to which the Authority wishes me to accede. Whilst submissions as to penalty, educated by the determination of the Tribunal as to misconduct, may conveniently be considered separately from the evidence as to the nature and seriousness of the misconduct, what is sought in this case is a discrete misconduct trial without all the evidence going to its seriousness, and consequently its nature. There is a real difficulty in identifying a split of that nature that could be managed in a way to provide justice to the parties. It is not a single trial that would give rise to excessive complexity, but in the circumstances of this application it is a split trial that would do so.

32. For these reasons, I refuse the Authority's application.

The application of Mr Ford and Mr Owen for specific disclosure

33. The application for specific disclosure was made by Mr Ford as part of the applications made by him for the purpose of this case management hearing. Mr Owen did not make an application of his own, but he supported that made by Mr Ford. Mr Johnson, whose position on his own reference has, as I have described, now altered, made no such application.

34. In his application, and in the skeleton argument he prepared for the hearing, Mr Ford described in the following way the documents and information he sought by means of his application:

> (1) All correspondence, internal memoranda, meeting notes, telephone attendance notes and other documentation relating to the decision to intervene with HMRC in respect of the ISA issue[1] and copies of all communications with HMRC in relation to this matter.
>
> (2) All correspondence, internal memoranda, meeting notes, telephone attendance notes and other documentation relating to the decision to close down Keydata and engage PwC to produce a 'Solvency Report' in May/June 2009 and all communications to and from PwC in relation to this matter.
>
> (3) All correspondence, internal memoranda, meeting notes, telephone attendance notes and other documentation relating to the FSA's decision to reject the Keydata rescue proposals and all communications to and from PwC in relation to this matter.
>
> (4) All correspondence, internal memoranda, meeting notes, telephone attendance notes and other documentation relating to the decision to procure the closure of Lifemark to new business and all communications to and from the CSSF in relation to this matter.
>
> (5) All correspondence, internal memoranda, meeting notes, telephone attendance notes and other documentation relating to the decision to block the Lifemark rescue proposals and all correspondence to and from the CSSF and the Provisional Liquidator of Lifemark in relation to this matter.

35. In addition to these categories of disclosure, Mr Ford's suggested direction included a request in relation to materials relating to the Authority's decision to withhold the findings of a 2007 Thematic Review[2] and the TLPI Review[3], a request for materials relating to the misappropriation of the assets of SLS (this is the fraud of which Mr Ford says he is a victim) and a similar request with respect to the decision-making processes of the Regulatory Decisions Committee (RDC) in connection with the issue of the warning notice to Mr Ford on 26 October 2010 and the Decision Notice of 7 November 2014.

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[1] The ISA issue refers to the case of Mr Ford that the intervention of the Authority prevented Keydata from finalising agreement with HMRC under a "simplified voiding process" to resolve issues concerning the ISA status of products distributed by Keydata.

[2] The Thematic Review is referred to by Mr Ford in his reply to the Authority's statement of case (p 102) as a review of a test sample of 10 IFAs, which raised concerns about the way in which IFAs were marketing the Keydata Secure Income Bond, which was a product backed by traded life settlements. Mr Ford says that the Authority did not publish its findings until forced to do so by a Freedom of Information (FOI) request.

[3] The TLPI Review is a reference to the Authority's 2008 review of traded life settlements, also referenced at p 102 of Mr Ford's reply, by which the Authority concluded that products backed by traded life settlements were a "high risk" investment. Mr Ford says that the market was not informed of these findings until disclosed 6 years later by way of an FOI request.

36. This is a wide-ranging request, but it has as a common feature a request for information concerning the decision-making processes of the Authority in the various respects identified.

37. In support of his application, Mr Ford says that the cornerstone of his case is that the interventions by the Authority were the actual cause of the failure of the Lifemark bonds, resulting in what he describes as the "massive" consumer detriment for which the Authority now wishes to find him responsible. He argues that evidence going to the conduct of the Authority and the consequences of that conduct is central to his case and that it would be grossly unfair if he were prevented from relying on such evidence when defending the Authority's very serious allegations of dishonesty and lack of integrity on his part. Mr Ford says that it is high time that a light was shone into "the dark corners of the FSA's operations and this failed regulator was fully accountable for the damage it has caused to the UK financial services sector". These arguments reflect similar points raised in Mr Ford's reply to the Authority's statement of case, where he sets out (at pp 106-112) documents and information required from the Authority and argues (at para 3.24) that by not acceding to these requests the Authority is seeking to conceal its responsibility for the "wholly unwarranted harm inflicted upon UK retail investors, the IFA community, Keydata, Lifemark, the Ford Family Trusts and [Mr Ford himself]".

38. Any application for specific disclosure must be tested by reference to relevance and proportionality. Relevance must be considered in the context of the matters which are within the jurisdiction of the Tribunal to determine. That jurisdiction is a statutory one, contained in s 133 of the Financial Services and Markets Act 2000 ("FSMA"). By s 133(4), the evidence which the Tribunal may consider is any evidence relating to the subject matter of the reference.

39. A reference is not an appeal from any decision of the Authority or the RDC. The Tribunal has a first instance jurisdiction, and considers the subject matter of the reference afresh by way of complete rehearing. It is concerned with the decisions that have been taken by the Authority with respect to the conduct of the applicants, and, in the light of its own findings in relation to the subject matter of the reference, what action in relation to the financial penalty it considers is appropriate to be taken by the Authority, and in relation to prohibition, whether the reference should be dismissed or remitted to the Authority to reconsider and reach a decision in accordance with the findings of the Tribunal (s 133(5), (6)).

40. The subject matter of the references in this case is the conduct of the applicants. It is that conduct which must be considered by the Tribunal. Mr Ford was unable to persuade me that his disclosure requests going to the decision-making processes of the Authority had relevance in these proceedings to the conduct of the applicants.

41. Mr Ford wishes to defend that element of the Authority's case which pleads the consumer detriment in support of the allegation that the applicants were guilty of serious misconduct. I accept that this will involve the Authority showing that there was a causal connection between the alleged misconduct and the consumer detriment said to arise from it. However, agreeing with Mr George's submission in this respect,

Mr Ford's case that it was the actions of the Authority, and not the conduct of the applicants, that caused the consumer detriment, can be made on the basis of the factual account of the actions of the Authority, when considered in the context of the Tribunal's consideration of the facts as a whole.

42. Whilst I should note that, by s 133A(5) FSMA, the Tribunal has the power, on determining a reference, to make recommendations to the Authority as to its regulatory provisions and procedures, the extent to which evidence may be adduced as to the reasons why the Authority made certain decisions must be determined in each case as a matter of relevance. The internal decision-making processes of the Authority, and its motives in taking the actions it took, may be relevant to the misfeasance proceedings, but they are not, in my judgment, relevant to the subject matter of these references. That includes the decision-making processes and motivation behind the decisions taken by the Authority in relation to the 2007 Thematic Review and the TLPI Review, the actions of the Authority in relation to HMRC in connection with the ISA status of the investment products, and the actions taken in respect of Keydata, SLS and Lifemark.

43. Part of Mr Ford's disclosure request, and the only part that did not relate in terms to the decision-making processes of the Authority, was that in connection with the alleged fraud in relation to SLS. Mr Ford told me that a 320-page document concerning the SLS fraud had been completely ignored by the Authority. To the extent that the disclosure request in this regard also sought to obtain disclosure in relation to the reasons for the Authority's actions, or inaction, in relation to the alleged fraud, that too would fall to be refused for the reasons I have given. But to the extent that that there might be disclosure which would tend to support Mr Ford's case that there had been a fraud, and that he had been a victim of it, that would be a proper matter for disclosure.

44. It would, however, be inappropriate for a direction for disclosure in respect of the alleged SLS fraud to be made either at this time, or in the terms put forward by Mr Ford. A wide-ranging request for all FSA correspondence "relating to the misappropriation of the assets of SLS" would encompass materials that were not concerned with the case that there was a fraud. That would not be a proportionate direction to make. To the extent that disclosure in that respect is appropriate, a more targeted approach would be required.

45. My directions have included a direction that the Authority make secondary disclosure to the applicants, in accordance with paragraphs 6 and 7 of Schedule 3 to the Tribunal Procedure (Upper Tribunal) Rules 2008. That requires the Authority to disclose any further material, beyond that already disclosed in these proceedings, which might reasonably be expected to assist each applicant's case as disclosed by the applicant's reply to the Authority's statement of case. That should include such material, not already disclosed, as might reasonably be expected to assist the cases of Mr Ford and Mr Owen with respect to the existence and nature of the alleged SLS fraud, along with other matters such as whether the investment products were not, as the Authority alleges, "high risk", the facts relating to the ISA issue, the viability of

the Lifemark business model and the solvency or otherwise of Keydata at the material time.

46. Once that exercise has been completed, it will be open to any of the applicants to make such further disclosure requests as they consider are appropriate, having regard to my decision on this application. To the extent that any of the applicants consider that further disclosure will at that stage enable relevant evidence to be put before the Tribunal, it should then be possible for a more focused request to be made.

47. Accordingly, I refuse the application of Mr Ford and Mr Owen for specific disclosure.

ROGER BERNER
UPPER TRIBUNAL JUDGE

RELEASE DATE: 1 February 2016