



Press Summary

21 October 2026

ScottishPower (SCPL) Limited and others (Respondents) v Commissioners for His Majesty’s Revenue and Customs (Appellant)

[2026] UKSC 35

On appeal from: [2025] EWCA Civ 3

Justices: Lord Reed, Lord Stephens, Lady Rose, Lady Simler and Lord Doherty

Background to the Appeal

ScottishPower Energy Retail Limited (“SPERL”), a holder of gas and electricity supply licences, was required to comply with obligations imposed by its licence conditions and under the Electricity and Gas (Community Energy Savings Programme) Order 2009. These included obligations regarding marketing and sales practices, complaints handling, the costs of different payment methods, and carbon emissions reductions. The Gas and Electricity Markets Authority (“GEMA”), and the Office of Gas and Electricity Markets (“Ofgem”), on GEMA’s behalf, undertook investigations into SPERL and found it had committed serious breaches of these obligations [2], [3], [9], [22]-[38].

GEMA had the power to impose fines on SPERL as punishment for those breaches. Instead, GEMA reached a series of settlement agreements with SPERL. Under the terms of those settlement agreements, SPERL made approximately £28m worth of payments to various customers and charities (the “Redress Payments”). In return, under each settlement SPERL was subject only to a nominal fine of £1. The appeal raises the issue whether the Redress Payments can be deducted from turnover when computing trading profits for the purposes of corporation tax [3], [22]-[38].

Under section 2 of the Corporation Tax Act 2009 (“CTA”), corporation tax is charged on the profits (that is, the income and chargeable gains) of companies. Under section 35 of the CTA, the charge to corporation tax on income applies to the profits of a trade. In turn, section 46 of the CTA provides that profits are to be calculated in accordance with generally accepted accounting practice, subject to any adjustment required or authorised by law. Section 54(1)(a) CTA then provides that in the calculation of the profits of a trade, no deduction is allowed for expenses “not incurred wholly and exclusively for the purposes of the trade” [5].

ScottishPower accepted that penalties were not deductible for the purposes of corporation tax. They maintained that the Redress Payments were, however, not penalties or in the nature of penalties, and were deductible [3].

The First-tier Tribunal (“FTT”) considered that it was clear the Redress Payments were intended to be punishments and so the same reasons that prevented the deduction of penalties also applied to the Redress Payments. It held, however, that compensatory payments could be deducted and so allowed a small portion of the Redress Payments (£554,013) on that basis, while disallowing the remainder [68], [70].

The Upper Tribunal (UT) disagreed with the distinction drawn between compensatory and punitive payments by the FTT. The UT considered the key question was whether the Redress Payments had the necessary punitive character. It considered that all the Redress Payments were part of an “overall package” imposed under the threat of penalties. They had, in their entirety, the character of penalties and were therefore not deductible [73], [74].

The Court of Appeal allowed ScottishPower’s appeal. The Court held that the rule that penalties could not be deducted was a judge-made rule. Payments made instead of a penalty were not penalties. It would go beyond the judiciary’s proper role to extend the rule, which was a matter for Parliament [78]. Accordingly, ScottishPower were entitled to deduct the whole of the Redress Payments.

HMRC appealed to the Supreme Court.

Judgment

The Court allows the appeal and restores the decision of the UT. Lady Rose and Lord Doherty gave the judgment, with which Lord Reed, Lord Stephens and Lady Simler agreed.

Reasons for the Judgment

The reason why penalties are not deductible is because they are not incurred “wholly and exclusively for the purposes of the trade” under section 54(1)(a) CTA, not because there is a judge-made rule that they are not deductible. When a taxpayer pays a penalty, their purpose is not to carry on the trade, but to satisfy a legal obligation that arises from their infringement. This is clear from the authorities and also supported by policy considerations [81]-[87].

It is wrong to characterise the Redress Payments as voluntary. They were paid to avoid the significant penalties that would otherwise have been imposed [89]. Treating the Redress Payments differently from penalties would unfairly disadvantage regulated persons who, because their alleged infringement was borderline, would look to force GEMA to impose a penalty (which could be appealed) rather than agreeing a settlement (which requires giving up the right to appeal). On ScottishPower’s argument that would be unfair because the latter would be tax deductible while the former would not be [90]. It was also wrong to treat the Redress Payments like compensation under a contract: ScottishPower’s breaches involved breaking statutory obligations and licence conditions that were similar to statutory obligations. The Redress Payments were sufficiently similar to penalties that they were not expenditure “for the purposes of the trade” and therefore could not be deducted [94]. It was also not possible to treat payments to customers differently from the other payments under the settlement agreement: they were all part of the package negotiated as an overall deal [99].

The Court therefore allowed HMRC’s appeal and restored the decision of the UT [100].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)