

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

B E T W E E N

**THE QUEEN
on the application of
GOOD LAW PROJECT LIMITED**

Claimant/Respondent

and

**COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS**

Defendant/Applicant

UBER LONDON LIMITED

Interested Party

HMRC's SKELETON ARGUMENT
For hearing on 6 November 2019

1. This skeleton is in support of, and confined to, an application by Her Majesty's Revenue and Customs ("**HMRC**") for a Court order primarily under section 18(2)(e) of the Commissioners for Revenue and Customs Act 2005 ("**CRCA**"). HMRC reserve their position on all other matters relating to the claim.
2. On 6 June 2019, the Good Law Project ("**GLP**") made a claim for judicial review against HMRC in relation to "*HMRC's failure to raise a VAT assessment*" against Uber London Limited ("**ULL**"), naming ULL as an Interested Party to that claim (see Appendix 1, section 3 to HMRC's Application). In outline, GLP claims that HMRC appreciate that ULL "*may*" be liable to account for VAT or that there is a "*risk of underpaid VAT*" (paragraphs 79 and 81 of GLP's Statement of Facts and Grounds – see Appendix 2 to HMRC's Application) and argues that HMRC should therefore raise protective assessments against ULL before HMRC become time-barred from recovering what GLP claims is a very substantial amount of VAT (paragraph 1 of Appendix 2). GLP claims that if the failure to assess is based on a

view that HMRC have not yet concluded their investigations or satisfied themselves that they are more likely than not to win, this would be a misdirection by HMRC as to their assessment powers (paragraph 80 of Appendix 2).

3. The remedy that GLP seeks is “*an order requiring HMRC to raise protective assessments; or alternatively, an order requiring HMRC to consider raising protective assessments in light of the correct understanding as to the scope of its power to do so*” (Claim Form, section 7).
4. In order for HMRC to be able properly to respond to this claim, some limited disclosure of confidential information relating to ULL may be required. However, section 18(1) of the CRCA prohibits the disclosure of “*information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs*” though such disclosure can be made, *inter alia*, for “*the purposes of civil proceedings...relating to a matter in respect of which the Revenue and Customs have functions*” (section 18(2)(c)) or where it is “*made in pursuance of an order of a court*” (section 18(2)(e)). Another exception is that disclosure may be made “*with the consent of each person to whom the information relates*” (section 18(2)(h)), but ULL has not provided such consent.
5. HMRC have made an application pursuant to CPR Part 3.1(2)(a) and 3.1(2)(m) and CPR Part 5.4C(4) for an Order in the following terms:
 - (a) That HMRC be permitted to disclose to GLP information regarding HMRC’s position in relation to ULL, limited to whether at the date of such disclosure there has been a decision to assess or a decision not to assess ULL for any particular prescribed accounting period (“HMRC’s Position”);
 - (b) That GLP shall not disclose the said information for any purpose¹;
 - (c) That a non-party may not obtain a copy of HMRC’s Acknowledgement of Service²; and
 - (d) That time limits for HMRC to file an Acknowledgment of Service under CPR Part 54.8(2)(a) be extended to 21 days after determination of this application.

¹ HMRC confirm ‘for any purpose’ means other than that of the present proceedings.

² As made clear in paragraph 14 of HMRC’s Application, this in fact should also include a prohibition on obtaining a copy of HMRC’s Detailed Grounds of Defence.

6. Both GLP and ULL object to HMRC's application for a court order requiring disclosure of HMRC's Position. ULL has said in a letter to the Court of 4 July 2019 that it objects on the grounds that confidentiality in its tax affairs should be protected. Presumably ULL will argue that there should be no disclosure either under section 18(2)(c) or under section 18(2)(e)). GLP's grounds for objecting are less easy to understand. It is claimed that there is no need for a Court order and that HMRC could simply disclose the position under section 18(2)(c), but this hardly warrants an objection to the application; it is difficult to see why GLP cares pursuant to which sub-section it receives the relevant information. In any event, the Court will note that HMRC set out in their application that they consider that disclosure could indeed be made pursuant to section 18(2)(c).
7. HMRC seeks an order pursuant to section 18(2)(e) CRCA rather than relying on section 18(2)(c) CRCA for the following reason. As noted above, HMRC consider that section 18(2)(c) enables HMRC to disclose its Position as they would be doing this "*for the purposes of*" defending the judicial review civil proceedings brought against them by GLP. However, in *Ingenious Media Holdings* [2016] STC 2306, in support of the duty of confidentiality owed by HMRC, the Supreme Court referred to *IRC v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 where Lord Wilberforce said that "*the whole system...involves that...matters relating to income tax are between the commissioners and the taxpayer concerned*" and that the "*total confidentiality of assessments and of negotiations between individuals and the revenue is a vital element in the working of the system*" (paragraph 17). This is a claim by an unrelated third party about confidential taxpayer affairs. It is therefore appropriate to allow the Court to consider whether disclosure ought to be made, particularly in light of ULL's objections, rather than simply rely on s18(2)(c). Moreover, as wrongful disclosure is an offence under section 19 CRCA, HMRC reasonably wish to seek the Court's approval in disclosing their position, to eradicate any risk of committing such an offence.
8. Further, by HMRC's making an application for an order under section 18(2)(e), ULL will itself have the opportunity to put its case against disclosure and the Court

will be able to determine whether disclosure is reasonable, appropriate and lawful and to attach any necessary conditions to such disclosure.

9. GLP's claim that the order for disclosure should be wider (paragraph 15 of GLP's Objection) is not understood. It is for HMRC to determine what it needs to disclose and GLP have provided no basis for their apparent view that greater disclosure is required.
10. As regards the conditions, HMRC are caught between ULL and GLP. ULL wants stricter conditions to attach; HMRC would have no objection to this in principle, though no stricter wording has been supplied by ULL as yet. GLP argues that there is no need for any conditions at all and that CPR Part 31.22 prevents it from disclosing HMRC's Position in any event. HMRC's primary position is that GLP are not, either pursuant to CPR Part 31.22 or in any event, able to disclose any information or documents provided to it by HMRC.
11. However, the direction that GLP be prohibited from doing so was requested in order to avoid any possible argument by GLP that such further disclosure by it is not prohibited, for example, because CPR Part 54 does not require disclosure, or that it has not provided any implied undertaking not to disclose or on any other basis. In *R (on the application of Privacy International) v Revenue and Customs Commissioners* [2015] STC 948, Green J criticised HMRC for not taking into consideration the possibility that information could be disclosed to Privacy International on the basis that it would be agreed that it would be received on a confidential basis (paragraphs 68 and 81). Requiring the party receiving the information not to disclose it further is therefore a sound way in which to limit the harm of disclosure of information falling within section 18(1) CRCA.
12. GLP has not in any event explained why it would resist the restriction HMRC wish to include, in particular if GLP considers that the restriction would in any event apply. GLP's insistence that it "*is not for HMRC to seek to restrict how GLP conducts itself in public interest judicial review litigation*" (paragraph 15 of GLP's Objection) would appear to suggest that GLP does not in fact consider itself already restricted.

13. Again in order to protect taxpayer confidentiality as far as reasonably possible, HMRC also request that the Court order pursuant to CPR Part 5.4C(4)(a) that a non-party cannot obtain a copy of HMRC's Acknowledgement of Service or Detailed Grounds of Defence. In *R (Corner House Research) v Director of the Serious Fraud Office* [2008] EWHC 246 (Admin), it was decided that the definition of 'statement of case' in CPR Part 2.3 should be read purposively to include an Acknowledgement of Service and Detailed Grounds of Defence in judicial review proceedings such that a non-party would have access to this document under CPR Part 5.4C(1) (paragraph 27). It appears that neither GLP nor ULL objects to this part of HMRC's application. GLP's claim that HMRC has not however attempted to articulate the necessity for this prohibition (paragraph 15 of GLP's Objection) is not understood. HMRC has explained that its Application is founded on the need to protect taxpayer confidentiality as far as reasonably possible.

14. Finally, HMRC request that the Court extend the time for HMRC to file its Acknowledgment of Service to 21 days after the Court's determination of this application so that, should the Court grant the application, HMRC may refer to HMRC's Position in setting out their Summary Grounds of Defence or consider how else they can respond to the claim if the application is not granted. ULL consents to this aspect of HMRC's application; GLP opposes. HMRC would ordinarily have 21 days (CPR Part 54.8). The Court will appreciate that while the position regarding disclosure remains unresolved, HMRC have been unable to make any progress with preparing their Acknowledgment of Service. GLP have not explained why granting HMRC 21 days rather than seven days would in any way prejudice GLP.

29 October 2019

Nigel Fleming QC

39 Essex Chambers
Nigel.fleming@39essex.com
020 7832 1111

Eleni Mitrophanous

Matrix Chambers

Elenimitrophanous@matrixlaw.co.uk

020 7404 3447