Neutral Citation Number: [2019] EWHC 3125 (Admin)

Case No: CO/2150/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/11/2019

Before :

MRS JUSTICE LIEVEN DBE

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Between :

GOOD LAW PROJECT LTD	**Claimant**
- and –	
COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS	**Defendant**
-and-	
UBER LONDON LTD	**Interested Party**

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- -

Mr Christopher Knight (instructed by **Irwin Mitchell LLP**) for the **Claimant**
Mr Nigel Pleming QC and Ms Eleni Mitrophanous (instructed by **the General Counsel and Solicitor for HMRC**) for the **Defendant**
Mr Sam Grodzinski QC (instructed by **Herbert Smith Freehills LLP**) for the **Interested Party**

Hearing dates: 6 November 2019

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Approved Judgment

The Honourable Mrs Justice Lieven DBE :

1. This is an application by Her Majesty's Revenue and Customs (HMRC) for a court order under s.18 of the Commissioners for Revenue and Customs Act 2005 (CRCA). The application arises in a judicial review brought by Good Law Project Limited (GLP) challenging the failure of HMRC to raise a "protective assessment" on the Interested Party (Uber) to VAT. In outline GLP claim that HMRC appreciate that Uber may be liable to account for VAT, or that there is a risk of underpaid VAT, and argues that HMRC should therefore raise a protective assessment, in order to avoid each successive VAT period becoming time-barred.

2. HMRC were represented before me by Mr Pleming QC and Ms Mitrophanous, GLP by Mr Knight, and Uber by Mr Grodzinski QC. I am extremely grateful to all of them for their assistance.

3. The claim was filed on 28 May 2019. The Statement of Facts and Grounds sets out why GLP says that it has standing in the matter, and then raises four grounds of challenge; that HMRC has erred in treating time limits for the raising of a protective assessment as irrelevant; that HMRC has misdirected itself as to its assessment powers; that HMRC has had regard to irrelevant considerations; and that it has failed to apply its charter and guidance. The question of permission, including standing, is not before me. However, there is nothing in the Grounds to suggest that they are frivolous or no more than a "fishing expedition" and Mr Pleming points to the fact that they are drafted by senior tax counsel.

4. Shortly before the due date for HMRC's Acknowledgement of Service and Summary Grounds to be filed HMRC made the present application. HMRC apply for an order:

> *"(a) That HMRC disclose to GLP information regarding HMRC's position in relation to Uber London Limited ("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 purpose;*
>
> *(c) That a non-party may not obtain a copy of HMRC's Acknowledgment of Service; and*

> *(d) That time limits for HMRC to file an Acknowledgment of Service under CPR part 45.8(2)(a) be extended to 21 days after determination of this application."*

5. GLP resist (a) on the basis that they say it is unnecessary, and resist the restriction on it contained in (b). It is neutral on the restriction in (c). Uber argue that no disclosure should be made and if any disclosure is made it should be subject to further conditions and controls.

6. The application turns on the proper interpretation of s.18(2) of the CRCA, and the principle of taxpayer confidentiality. It is therefore necessary to consider the various cases dealing with taxpayer confidentiality in a little detail.

7. Section 18 (1) and (2) state (as relevant);

> *(1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.*
>
> *(2) But subsection (1) does not apply to a disclosure—*
> *(a) which—*
> *(i) is made for the purposes of a function of the Revenue and Customs, and*
>
> *(ii) does not contravene any restriction imposed by the Commissioners*
> *…,*
>
> *(c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,*
>
> *…*
> *(e) which is made in pursuance of an order of a court*

8. Section 19 (1) and (3) state;

> *(1) A person commits an offence if he contravenes section 18(1) or (2A) or 20(9) by disclosing revenue and customs information relating to a person whose identity—*
> *(a) is specified in the disclosure, or*
>
> *(b) can be deduced from it.*
>
> *…*

> *(3) It is a defence for a person charged with an offence under this section of disclosing information to prove that he reasonably believed—*
> *(a) that the disclosure was lawful, or*
>
> *(b) that the information had already and lawfully been made available to the public*

9. Mr Pleming says that it is at least in part because of a concern that there should be no suggestion that HMRC have committed an offence under s.19, that HMRC make this application to court, rather than simply relying on s.18(2)(c).

10. There is no doubt that there is a strong principle running through the caselaw, and given statutory force in s.18(1), of the importance of protecting confidentiality between the taxpayer and HMRC. In *Inland Revenue Commissioners v National Federation of Self Employed and Small Businesses* [1982] AC 617 (the *Fleet Street Casuals* case) the House of Lords was considering a challenge by the NFSE to a special arrangement made by the Revenue with a group of taxpayers. The principal issue in the case was whether NFSE had locus standi to bring a challenge to the Revenue's decision. The majority of the House found that NFSE did not have sufficient locus. Lord Diplock dismissed the claim on the grounds that NFSE had not shown any evidence of ultra vires or unlawful conduct.

11. All parties before me accept that the law on standing in judicial review has significantly developed since 1982. However, reliance is placed, particularly by Mr Grodzinski, on passages in the judgments concerning taxpayer confidentiality. At p.633B-E Lord Wilberforce said;

> *"Not only is there no express or implied provision in the legislation upon which such a right could be claimed but to allow it would be subversive of the whole system, which involves that the commissioners' duties are to the Crown, and that matters relating to income tax are between the commissioners and the taxpayer concerned. No other person is given any right to make proposals about the tax payable by any individual: he cannot even inquire as to such tax. The total confidentiality of assessments and of negotiations between individuals and the revenue is a vital element in the working of the system. As a matter of general principle I would hold that one taxpayer has no sufficient interest in asking the court to investigate the tax affairs of another taxpayer or to complain that the latter has been under-assessed or over-assessed: indeed, there is a strong public interest that he should not. And this principle applies equally to groups of taxpayers: an aggregate of*

> *individuals each of whom has no interest cannot of itself have an interest."*

12. Lord Scarman at p.654 E-G said;

> *Lastly, I wish to comment shortly upon the duty of confidence owed by the revenue to every taxpayer and the right to discovery. The duty of confidence can co-exist with the duty of fairness owed to the general body of taxpayers. It is, however, of great importance when discovery is sought by an applicant, as happened in this case. Upon general principles, discovery should not be ordered unless and until the court is satisfied that the evidence reveals reasonable grounds for believing that there has been a breach of public duty: and it should be limited strictly to documents relevant to the issue which emerges from the affidavits. The revenue in any event will have the right in respect of certain classes of document to plead " public interest immunity," of which in a proper case the court will be the arbiter: Burmah Oil Co. Ltd. v. Governor and Company of the Bank of England [1980] A.C. 109*0.

13. I treat this passage with a little caution, because firstly it is dealing with discovery of documents, rather than the prior stage in judicial review of whether the fact of a protective assessment (or not) can be disclosed, and secondly, because the principles of the duty of candour have developed very significantly since 1982.

14. Lord Roskill at p.662F-G said;

> *The appellants are responsible for the overall management of the relevant part of the taxation system of this country, and for the assessment and collection of taxes from those who are, by law, liable to pay them. Such assessment and collection is a confidential matter between the appellants and each individual taxpayer. Such confidence is allowed to be broken only in those exceptional circumstances for which the statute makes express provision*

15. As I have said it is accepted that the law on standing has much developed since *Fleet Street Casuals*, and I need only refer to *R (World Development Movement) v Secretary of State for Foreign and Commonwealth Office* [1995] 1 WLR 386.

16. The principle of taxpayer confidentiality was considered by the Supreme Court in *R (Ingenious Media) v HMRC* [2016] 1 WLR 4164. In that case the Claimant brought a judicial review against HMRC for a declaration that the 'off the record' briefing to the media by a senior HMRC official about the Claimant's tax affairs was unlawful and in breach of s.18 CRCA. The case turned on the meaning of s.18(2)(a)(i) and did not concern s.18(2)(c), or the circumstances in which an order under (e) should be made. The Supreme Court allowed the appeal by Ingenious Media and at [17- 19] Lord Toulson said;

17. Unfortunately the courts below were not referred (or were only scarcely referred) to the common law of confidentiality. The duty of confidentiality owed by HMRC to individual taxpayers is not something which sprang fresh from the mind of the legislative drafter. It is a well established principle of the law of confidentiality that where information of a personal or confidential nature is obtained or received in the exercise of a legal power or in furtherance of a public duty, the recipient will in general owe a duty to the person from whom it was received or to whom it relates not to use it for other purposes. The principle is sometimes referred to as the Marcel principle, after Marcel v Commissioner of Police of the Metropolis[1992]Ch 225. In relation to taxpayers, HMRCs entitlement to receive and hold confidential information about a person or a company's financial affairs is for the purpose of enabling it to assess and collect (or pay) what is properly due from (or to) the taxpayer. In R v Inland Revenue Commissioners, Ex p National Federation of Self-Employed and Small Businesses Ltd [1982] AC617, 633, Lord Wilberforce said that the whole system . . . involves that . . . matters relating to income tax are between the commissioners and the taxpayer concerned…

18. The Marcel principle may be overridden by explicit statutory provisions. In In re Arrows Ltd (No 4) [1995] 2 AC 75, 102, Lord Browne Wilkinson said: In my view, where information has been obtained under statutory powers the duty of confidence owed on the Marcel principle cannot operate so as to prevent the person obtaining the information from disclosing it to those persons to whom the statutory provisions either require or authorise him to make disclosure.

19. Subsections (2)(b) et seq of section 18 contain specific provisions permitting the disclosure of taxpayer information for various purposes other than HMRC's primary function of revenue collection and management. What then is the proper interpretation of the far broader words or subsection (2)(a)(i) "disclosure … made for the purposes of a function" of HMRC? On HMRC's interpretation, it would be hard to conceive a wider expression. By taking section 5, 9 and 51(2) in combination, it is said to include anything which in the view of HMRC is necessary or expedient or incidental or conducive to or in connection with the exercise of the functions of the collection and management of revenue. If that is the right interpretation of subsection (2)(a)(i), it means that a number of the subsequently listed specific exceptions are otiose, including (c) and (d), which deal with disclosure for the purposes of civil or criminal proceedings relating to matters connected with customs and excise. Secondly, and more fundamentally, it means that the protection which would otherwise have been provided to the taxpayer by HMRC's duty of confidentiality will have been very significantly eroded by words of the utmost vagueness. So to construe the words would run counter to the principle of construction known as the principle of legality, after Lord Hoffman's use of the term in R v Secretary of state for the Home Office, Ex p Simms [2000]2 AC 115, 131."

17. These passages make clear that the issue in *Ingenious* was how the *Marcel* principle applied to the broad words in s.18(2)(a)(i) and whether HMRC were right to say that sub-section (a)(i) covers anything which in the view of HMRC was necessary, conducive to, incidental to or in connection with the exercise of their functions. Lord Toulson's comments in [23] as to disclosure being permitted "to the extent reasonably necessary for HMRC to fulfil its primary function" must be read in the context of what it was the Supreme Court was actually considering.

18. There is necessarily a balance in this case between the importance of open justice and that of maintaining tax payer confidentiality. In *R (Privacy International) v HMRC* [2015] 1 WLR 397 Green J was considering a challenge to HMRC's decision that it had no power to provide information to Privacy International (an NGO) about the alleged activities of a UK company allegedly involved in covert surveillance. The case did not concern s.18(2)(c), but Green J did refer at [62] to there being a "powerful presumption" that when matters came to court they should be conducted in public, and this impacted on the availability of documents and, at [68], that the evaluative exercise that had to be carried out under s.18(2), was based in real life and not abstractions.

19. In *HMRC v Banerjee* [2009] STC 1930, Henderson J was considering an appeal by Dr Banerjee against an amendment to her tax return. The Revenue had appealed to the High Court and the Judge circulated a draft judgment. At that stage Dr Banerjee applied for the judgment to be anonymised in order to protect her privacy. The Judge considered whether her application would have succeeded if made before the hearing and said at [34] and [35]

> *34. ....Nevertheless, in my judgment any such application would have been firmly rejected, on the basis that the fundamental principle of public justice enshrined in Article 6(1) of the Convention, and long established in the English common law, would have decisively outweighed the very limited interference with Dr Banerjee's right to respect for her private life, and the very limited disclosure of information relating to her personal financial affairs, that a public hearing would entail. I will assume in Dr Banerjee's favour at this point that her relevant rights of privacy and confidentiality had not already been irretrievably lost by reason of the public hearing of her previous appeal to the Commissioners. Making that assumption, I would accept that her Article 8(1) rights were engaged. In my opinion any taxpayer has a reasonable expectation of privacy in relation to his or her*

> *financial and fiscal affairs, and it is important that this basic principle should not be whittled away. However, the principle of public justice is a very potent one, for reasons which are too obvious to need recitation, and in my judgment it will only be in truly exceptional circumstances that a taxpayer's rights to privacy and confidentiality could properly prevail in the balancing exercise that the court has to perform.*

> *35. It is relevant to bear in mind, I think, that taxation always has been, and probably always will be, a subject of particular sensitivity both for the citizen and for the executive arm of government. It is an area where public and private interests intersect, if not collide; and for that reason there is nearly always a wider public interest potentially involved in even the most mundane-seeming tax dispute. Nowhere is that more true, in my judgment, than in relation to the rules governing the deductibility of expenses for income tax. Those rules directly affect the vast majority of taxpayers, and any High Court judgment on the subject is likely to be of wide significance, quite possibly in ways which may not be immediately apparent when it is delivered. These considerations serve to reinforce the point that in tax cases the public interest generally requires the precise facts relevant to the decision to be a matter of public record, and not to be more or less heavily veiled by a process of redaction or anonymisation. The inevitable degree of intrusion into the taxpayer's privacy which this involves is, in all normal circumstances, the price which has to be paid for the resolution of tax disputes through a system of open justice rather than by administrative fiat.*

20. Mr Grodzinski submits that this passage turns critically on the fact that Dr Banerjee had chosen to challenge her assessment, and thus had effectively waived her right to confidentiality. However, although that was the factual situation in the case, Henderson J's reasoning in these paragraphs goes further than that, and shows that there will be a public interest balance to be struck in cases concerning confidentiality and tax.

21. The Supreme Court recently considered the importance of open justice in *Dring v Cape Intermediate Holdings* [2019] 3 WLR 429. The case concerned an application by third parties for access to documents disclosed at a trial relating to asbestos injury claims, which had been settled before judgment. Baroness Hale, giving the judgment of the Court, emphasised the importance of open justice at [34] and [37]

> *However, case after case has recognised that the guiding principle is the need for justice to be done in the open and that courts at all levels have an inherent jurisdiction to allow access in accordance with that principle. Furthermore, the open justice principle is*

> *applicable throughout the United Kingdom, even though the court rules may be different.*
> …
> *[37] So what were those principles? The purpose of open justice "is not simply to deter impropriety or sloppiness by the judge hearing the case. It is wider. It is to enable the public to understand and scrutinise the justice system of which the courts are the administrators" (para 79)…."*

The submissions

22. Mr Pleming submits that HMRC are caught between the Claimant and Uber, and are trying to achieve an appropriate balance between the competing interests at stake. He says that the application is made to ensure that there is no risk that HMRC will commit an offence under s.19 and to give Uber the opportunity to object to the limited disclosure which HMRC wish to make. The application was made in an attempt (not it has to be said wholly successfully) to avoid satellite litigation. The only disclosure which HMRC wish to make, certainly at this stage, is as to the fact of whether a protective assessment has been raised or not.

23. He submits that the test under s.18(2)(c) or (e) is not one of necessity, but rather a judgment either for HMRC or under (e) the Court, as to whether it is considered expedient or appropriate to make disclosure. He argues that a strict necessity test is inconsistent with the words both of s.18(2)(c) but also with s.19, which allows a defence of "reasonable belief". If that defence had been curtailed by the requirement that disclosure must be strictly necessary then that would have been made clear in the statute.

24. In HMRC's judgment it is appropriate to disclose in the Summary Grounds the fact of whether or not they have now raised a protective assessment. If a protective assessment has been raised, this would Mr Pleming says be a complete answer to GLP's case and, if it has not been, then it is a fact which HMRC are entitled to refer to, and GLP entitled to know. He does not accept Mr Grodzinski's submission that HMRC can defend the challenge wholly on the issue of standing, or wholly as a question of law without reference to any confidential information.

25. He argues that limb (b) of the proposed order is justified because there are legitimate concerns that GLP might disseminate the information further. HMRC did not support

Uber's proposal that if any order for disclosure is made then it should be made subject to a penal notice.

26. Mr Grodzinski argues that in order to give effect to Uber's statutory and common law right to confidentiality the court should only order disclosure if satisfied that it is necessary in order for HMRC to defend the challenge. The burden of showing that it is necessary is on HMRC. The fact that in HMRC's view it might be expedient to disclose is insufficient to outweigh Uber's right to confidentiality. Further, and in any event, HMRC's duty of candour would not trump Uber's right to confidentiality. He relied heavily on ***Ingenious Media*** and argued that without a necessity test for disclosure the Court would be making the same error of law as identified by Lord Toulson in that case.

27. He argued that if his submission was not accepted then a party could bring a claim for judicial review relating to a third party and HMRC could decide that it was expedient to disclose that third party's tax information, even before that claimant had established standing or before there was even found to be an arguable case. This would wholly undermine the principle of taxpayer confidentiality, which was strongly supported by *Fleet Street Casuals* and *Ingenious Media*.

28. Mr Grodzinski argued that the principles of open justice as referred to in *Banerjee* applied where a tax payer had challenged their assessment and therefore accepted a loss of confidentiality, but in other cases could not (or at least would generally not) outweigh the principle of confidentiality.

29. Mr Grodzinski referred to HMRC's pre-action protocol response letter and to the fact that they state in that letter that it would be objectionable to give a view on another party's tax liability. In relation to the argument about protective assessments, HMRC in that letter had responded to the claim on the basis of an analysis of the case law. He therefore argues that the Claim can be responded to on a purely legal analysis, and there is no necessity to make any disclosure, certainly at this stage.

30. Mr Grodzinski also relied, albeit saying it added little or nothing, on article 8 ECHR. He said that any order for disclosure would interfere with Uber's article 8 rights, and unless

the test was one of necessity any order for disclosure would not be proportionate under article 8(2).

31. He said that in principle Uber supported the imposition of conditions if disclosure was made, but argued that they would not work in practice. This was because once HMRC had referred to whether or not there was a protective assessment, GLP could respond to that in either a Reply or an Amended Claim, and the fact could be brought into the public domain. He did argue that a penal notice was appropriate in order to protect Uber's confidentiality.

32. Mr Knight supported most of Mr Pleming's submissions. He pointed out that if a wholly unmeritorious or "fishing" claim was brought against HMRC with the simple intent of exposing confidential information, then HMRC would not need to provide any confidential information. He argued that the statutory scheme in s.18 showed that Parliament had struck the relevant balance, and fully considered taxpayer confidentiality in that balance.

33. However, he argued that it was unnecessary to make an order under s.18(1)(e) because the matter was fully dealt with under (c). He said that there was no need for limb (2) of the proposed order because it simply repeated the restrictions on disclosure in CPR 31.22.

34. Mr Knight also queried how confidential the information actually was. Uber had already in their accounts set out a contingent liability for the possibility of having to pay UK VAT, therefore the contingency was already in the public domain.

Conclusions

35. There is an interplay in this application between the importance of maintaining taxpayer confidentiality, as explained most recently by the Supreme Court in *Ingenious Media,* and the importance of open justice. In circumstances such as arise in the present case, in my view that balance has been struck by Parliament in s.18(2)(c) CRCA. That provides that where a disclosure is made for the purpose of civil proceedings the prohibition in s.18(1) does not apply. The decision as to whether or not disclosure is made for the purpose of civil proceedings must under the statute be one for the Defendant making disclosure, and not, at least in the first instance, for the Court. If it was not a matter for the Defendant, then

(c) would be otiose because it would always be necessary for the Court to make an order under (e).

36. I do not accept Mr Grodzinski's argument that the test under s.18(2)(c) is one of necessity. Firstly, that would involve reading words into the sub-section that simply are not there. If Parliament had intended that there would be a test of necessity, then it is highly likely it would have said so. Such words are plainly not needed in order to make the sub-section make sense, or be operable. Further, to apply such a test is not consistent with the defence in s.19, which is one of reasonable belief. The fact that there is a criminal sanction attached to a breach of s.18, means that it is particularly important to read the words strictly, and not start incorporating words or principles that are not in the statute.

37. Secondly, I do not accept the reliance that Mr Grodzinski places on *Ingenious Media*. Critically, that case concerned s.18(1)(a) and the language of that provision is in a very different form to (c). At [19] Lord Toulson was strongly influenced by the vagueness of the words in sub-section (a) and the breadth of the interpretation being advanced by HMRC. As he explained, that breadth would have made other sub-sections otiose, and would have seriously undermined the right to confidentiality. It was for this reason that the Court relied on the principle of legality in *ex p Simms*.

38. However, those points cannot be applied by analogy to (c). The words are not vague, they refer specifically to civil proceedings. This is a discrete and well understood area of exception to principles of confidentiality. HMRC's interpretation does not conflict with a sensible reading of any of the other sub-sections, let alone render them otiose. It is not necessary in order to meet the mischief of the provision to read in a test of necessity.

39. Most importantly, (c) involves considerations of fair and open justice which simply did not arise in *Ingenious Media*. I agree with Mr Knight that *Ingenious Media* is concerned with the application of the *Marcel* principle in a statutory context. When Lord Toulson in [23] refers to "*an exception by permitting disclosure to the extent reasonably necessary for HMRC to fulfil its primary function",* he is clearly referring to sub-section (a) and the necessary implication of those words in that sub-section, not to the entirety of s.18(2).

40. I also do not accept Mr Grodzinski's argument that this approach would undermine taxpayer confidentiality because any third party could judicially review HMRC and then seek disclosure of the taxpayer's affairs. Plainly, if HMRC thought that a claim was being brought as a fishing expedition, or simply to obtain confidential information, then it could and doubtless would defend the claim on that basis without disclosing anything confidential.

41. I accept, whilst taking no view on arguability, the points made by Mr Pleming in reply, that the claim raises serious grounds and there is nothing to suggest that it is simply a mechanism to obtain confidential information.

42. I add, although I do not need to find this, that if I had to weigh up confidentiality against open justice on the facts of the case, I would find that the intrusion into Uber's confidentiality (or article 8 rights) is actually rather slight. The only information which at this stage HMRC want to disclose is whether or not they have made a protective assessment. If they have not, then that is the position as it stood in 2017 and was known to the public. If there is now a protective assessment, then that fact alone has a limited impact on taxpayer confidentiality, and is in any event a possibility which Uber have contemplated both in their contingent liabilities in the accounts, and in responses to the US Securities and Exchange Commission.

43. Mr Grodzinski argued that once GLP know if there is a protective assessment they can publish a figure for the likely amount of assessment. However, this would not be a case of HMRC disclosing confidential material, but GLP speculating on figures, albeit based on information which is in the public domain.

44. For all these reasons I consider it is lawful for HMRC to make disclosure of the fact or otherwise of a protective assessment. It was not in my view necessary for this application to be made. Section 18(2)(c) is rendered pointless if an application is made under (e) because HMRC are not prepared themselves to make the decision under (c). However, having said that, I can see why on the facts of this case HMRC decided it was best to be sure of the position by making the application, and I do not criticise them for doing so. But in future, they should make the decision themselves as to whether (c) applied. If they wish

to give the taxpayer a chance to challenge such a decision they can always give advance notice, so that the taxpayer could apply for an order prohibiting disclosure if so advised.

45. In respect of limb (2) of the order, I do not consider that it is necessary. The restriction on wider disclosure is contained within CPR 31.22 and that is necessarily binding on GLP. There are no grounds to believe that they will not comply with that restriction. To the degree that there is some lack of clarity as to precisely who within GLP would be allowed to see the material, the order will be limited to the director and officers of GLP, which I understand to be approximately 5 people.

46. I do not consider that it is appropriate to attach a penal notice to the order. Mr Grodzinski argued that this would be a way of dissuading GLP from any onward dissemination of confidential information. It is not normal in a judicial review to attach penal notices to orders, and Mr Grodzinski could point to no precedent for doing so. Although there is a strong principle of taxpayer confidentiality, there are many situations in the Administrative Court where highly sensitive material is disclosed in proceedings subject to CPR 31.22, and the Court has not found it necessary to attach penal notices.

47. I am content to order that no non-party can obtain a copy of HMRC's Acknowledgement of Service without making an application to the Court under CPR 5.4C. This will ensure that the press can apply if they so wish, but there is no automatic right for them to see the confidential information.