



**FIRST-TIER TRIBUNAL
TAX CHAMBER**

London, Taylor House

Appeal reference: TC/2024/04876

PROCEDURE – legal advice privilege – documents relating to whistleblowing and subsequent Employment Tribunal proceedings – whether covered by privilege on creation – yes, save for certain redactions – whether privilege lost or waived – no – application allowed in part.

Heard on: 9-10 June 2026

Judgment date: 7 October 2026

Before

TRIBUNAL JUDGE ANNE FAIRPO

Between

BARCLAYS BANK PLC

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Ms Oppenheimer KC, of counsel, and Ms Sagan, of counsel instructed by Freshfields LLP

For the Respondents: Ms Carpenter KC, of counsel, and Ms McGowan, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

Introduction

1. These applications arise from ongoing enquiries by HMRC into transactions undertaken by Barclays Bank Plc (“Barclays”) involving the sale of securitisation notes to entities within the Barclays group (“Barclays Group”) based in Luxembourg during the period 2014 to 2015. The enquiries concern, amongst other matters, the tax consequences of those transactions and the application of transfer pricing and anti-avoidance provisions.

2. In the course of those enquiries, HMRC issued notices under Schedule 36 Finance Act 2008 seeking information and documents. Barclays provided substantial material in response but withheld certain documents and parts of documents on the grounds of legal advice privilege. The present proceedings comprise a consolidation of three applications made by Barclays under the relevant tribunal regulations seeking a determination that the disputed materials are privileged and therefore exempt from production.

Relevant law

3. There was no particular dispute as to the relevant law in this appeal, which is summarised as follows.

Statutory framework

Schedule 36 Finance Act 2008

4. HMRC may require production of documents reasonably required to check a taxpayer's tax position by issuing an information notice under paragraph 1 of Schedule 36. However, paragraph 23 of that Schedule creates an absolute exception for privileged material. As such, an information notice cannot require a person to provide either privileged information or privileged documents. Paragraph 23(2) provides that the ordinary legal professional privilege test applies: material is privileged if a claim to legal professional privilege could be maintained in legal proceedings.

The Information Notice: Resolution of Disputes as to Privileged Communications Regulations 2009 (“the 2009 Regulations”)

5. Where HMRC and a taxpayer disagree about privilege, the taxpayer may apply to the FTT in which case the taxpayer must provide the disputed documents to the Tribunal alone. The Tribunal must determine whether, and to what extent, the documents are privileged and direct disclosure accordingly.

Burden of proof

6. The burden lies on the party asserting privilege, here Barclays.

Legal advice privilege (“LAP”)

7. The central legal test has been established in case law as applying where there is:

- (1) a confidential communication;
- (2) between lawyer and client;
- (3) made for the dominant purpose of obtaining or giving legal advice.

8. LAP also applies to secondary evidence of the content of such communications and documents that betray the trend of the advice (see, for example, *R (Jet2.com Ltd) v Civil Aviation Authority* [2020] QB 1027 at [96]).

Meaning of legal advice

9. Legal advice is construed broadly. Following *Three Rivers (No 6)* [2005] 1 AC 610, it includes advice about what should prudently and sensibly be done in a relevant legal context, not merely advice on strict legal rights and liabilities. The test often expressed is whether the lawyer is being asked to put on "legal spectacles". The key question is not whether the overall retainer was legal, but whether the particular communication was created for the dominant purpose of obtaining or giving legal advice. The dominant purpose must be the ruling, prevailing or paramount purpose. If two purposes are equally important, neither is dominant. Following *Three Rivers (No 5)* [2003] EWCA Civ 474, only those employees authorised to seek and receive legal advice constitute the "client". Communications with other employees are not themselves lawyer-client communications and require separate analysis.

Secondary evidence

10. Privilege extends beyond the original lawyer-client communication. It also protects documents that reveal, evidence, summarise or betray the substance of privileged legal advice. This derives from authorities including *Three Rivers (No 5)* and *Jet2.com*. However, there must be a sufficient basis to infer the substance of the advice. It is not enough merely that a document makes one wonder whether legal advice existed.

Confidentiality

11. Confidentiality is an essential condition of LAP. If a document is not confidential when created, privilege cannot arise. However, case law recognises that disclosure to a limited number of persons does not necessarily destroy confidentiality. Privileged communications may be disseminated within an organisation, or even to third parties, provided confidentiality is maintained expressly or impliedly (*USP Strategies Plc v London General Holdings Ltd* [2004] EWHC 373 (Ch); *Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda) Ltd* [1992] 2 Lloyd's Rep 540 ('*The Good Luck*'); *Gotha City v Sotheby's* [1998] 1 WLR 114).

Loss of privilege

12. Even where privilege initially exists, it can later be lost. In particular, privilege may be lost if the document or information is no longer confidential. Disclosure to a sufficiently large audience, or entry into the public domain, may destroy the confidential status necessary to sustain privilege.

13. Privilege belongs to the client and can be waived intentionally or by conduct (*PCP Capital Partners v Barclays Bank* [2020] EWHC 1393 (Comm)). A distinction is drawn in case law between:

- (1) a merely narrative reference to legal advice, which does not waive privilege; and
- (2) reliance on or deployment of the contents or conclusions of legal advice to advance a case, which may constitute waiver.

14. Where privilege is waived over part of a subject matter, fairness may require associated privileged material to be disclosed. A party cannot selectively deploy favourable privileged material while withholding the rest.

Background

15. The dispute has its origins in concerns raised by an employee (JP) of Barclays Bank UK plc (“BBUK”) in a whistleblowing disclosure raising concerns about transactions involving Luxembourg entities. The disclosure alleged that the transactions were inconsistent with the Barclays Group’s tax principles and relevant legal requirements. In support of those concerns, he referred to, amongst other matters, a legal opinion obtained by a Barclays Luxembourg entity from Slaughter and May in 2015. JP’s view was that the opinion had been sought on the basis of false or incomplete assumptions and did not address certain matters which he considered relevant.

16. The disclosure was treated by the Barclays Group as a whistleblowing matter and they instructed external solicitors, Hogan Lovells, to investigate the concerns which had been raised. Various witnesses described the issues raised by JP as complex and involving technical questions of tax law and transfer pricing. The investigation included the review of documents and interviews with JP and other Barclays Group personnel.

17. The investigation culminated in a written report prepared by Hogan Lovells, together with an executive summary and several annexes. Barclays contends that the report, summary and relevant annexes comprise, contain or reflect legal advice and were created for the dominant purpose of obtaining and providing such advice. HMRC disputes that characterisation and contends that the report was fundamentally an investigation report produced pursuant to the Barclays Group’s whistleblowing procedures and therefore does not attract LAP or alternatively does so only in part.

18. Following completion of the investigation, JP brought proceedings in the Employment Tribunal alleging that he had suffered detriment as a consequence of having made protected disclosures. BBUK accepted in those proceedings that JP had made a protected disclosure but denied that any detriment had occurred or that any alleged detriment was caused by the disclosure. The Employment Tribunal dismissed JP’s claim in July 2018.

19. The existence of the disputed documents became known to HMRC through material generated in connection with the Employment Tribunal proceedings, including references contained in the Employment Tribunal judgment and associated documents. Barclays’s position is that neither the report nor the executive summary was included within the Employment Tribunal bundle, nor provided to the Employment Tribunal, nor relied upon in determining the issues before the Employment Tribunal. It contends that any references to the investigation merely provided narrative background. HMRC, by contrast, argues that BBUK relied in those proceedings upon the findings and conclusions of the investigation, thereby waiving privilege or causing any confidentiality attaching to the documents to be lost.

20. The documents which remain in dispute (the “Disputed Documents”) fall into six categories:

- (1) A 2015 tax opinion prepared by Slaughter and May for a Barclays Luxembourg entity concerning the Newfoundland securitisation transactions.
- (2) A report prepared by Hogan Lovells in 2016 investigating JP’s whistleblowing allegations.
- (3) Relevant annexes to that report.
- (4) An executive summary of the Hogan Lovells report.
- (5) Redacted parts of interview notes relating to a meeting with JP.

(6) Redacted passages in interview notes and related correspondence involving other Barclays Group personnel.

21. Barclays maintains that all of those materials are protected by LAP, either as primary privileged communications or as secondary evidence revealing the substance of privileged legal advice. HMRC contends that privilege either never attached or, if it did, has subsequently been lost through dissemination, loss of confidentiality and/or waiver, particularly in connection with the Employment Tribunal proceedings.

22. Accordingly, the issues for the Tribunal are:

- (1) whether LAP attached to each category of disputed material when created;
- (2) whether any such privilege was subsequently lost through dissemination or loss of confidentiality; and
- (3) whether privilege was waived, expressly or impliedly, by references made during the Employment Tribunal proceedings or in subsequent correspondence with HMRC.

Were the documents privileged on creation?

Submissions

23. Barclays submitted that each of the disputed documents was protected by LAP when created and that privilege had neither been lost through dissemination nor waived during the Employment Tribunal proceedings. Barclays emphasised that the dispute concerned only LAP and not litigation privilege. It submitted that LAP protects confidential lawyer-client communications made for the purpose of obtaining or providing legal advice and extends to the continuum of communications passing between lawyer and client. The mere fact that a document does not itself contain legal advice in express terms does not deprive it of protection if it forms part of that continuum. Barclays relied in particular on *Three Rivers (No 6)*, *Balabel v Air India* [1988] Ch 317, and *Jet2*, and submitted that lawyers are acting in a relevant legal context where they are consulted “qua lawyer” and asked to apply their legal expertise.

24. As regards the Hogan Lovells report, annexes and executive summary, Barclays submitted that Hogan Lovells had been instructed as external specialist legal counsel to investigate allegations concerning compliance with tax law and to advise Barclays on the legal issues raised by the whistleblower. It argued that the investigation necessarily involved legal analysis of complex tax questions and that the report itself contained legal advice and legal conclusions. Barclays submitted that the report was therefore fundamentally different from the report considered in *A v UBS* (Employment Tribunal Case number 2200832/2019), which turned on its own facts and involved a lawyer acting as an independent investigator rather than in a legal advisory capacity. Barclays contended that the contemporaneous documents demonstrated that Barclays Group personnel sought legal expertise because of the complexity of the tax issues and that Hogan Lovells were engaged specifically to provide that expertise.

25. Barclays rejected HMRC’s argument that the whistleblowing policies demonstrated that the dominant purpose of the Hogan Lovells report was compliance with policy requirements rather than legal advice. It argued that the policies were generic documents applicable to many forms of whistleblowing and did not prescribe either the use of lawyers or the purpose of any particular investigation. The fact that an investigation was undertaken pursuant to a whistleblowing process did not preclude the dominant purpose of communications with external lawyers being the provision of legal advice. Barclays further submitted that accepting HMRC’s approach would mean that legal advice could not attract LAP whenever it was

obtained in connection with matters governed by company policies, such as whistleblowing, bribery or regulatory compliance investigations.

26. As to the Slaughter and May opinion, Barclays submitted that it was a paradigm example of privileged legal advice. It contended that HMRC did not materially dispute that privilege attached when the opinion was created and that the real dispute concerned alleged subsequent loss of confidentiality.

27. Finally, Barclays submitted that the redactions in the whistleblower notes, interview notes and email chains represented secondary evidence of privileged material, principally the Slaughter and May opinion and other privileged advice. It argued that further explanation of the redacted passages could not reasonably be provided without revealing the very communications over which privilege was claimed.

28. HMRC emphasised that Barclays bore the burden of proving privilege and argued that the witness evidence adduced by Barclays was inadequate, incomplete and in some respects incorrect. In particular, HMRC criticised the absence of evidence from those directly involved in the Hogan Lovells investigation and submitted that Ms Price's evidence consisted largely of opinion formed after reviewing documents rather than first-hand knowledge.

29. HMRC submitted that the dominant purpose requirement was a distinct and important component of LAP and should not be conflated with the requirement that a communication contain legal advice. It relied on authorities including *Waugh v British Railways Board* [1980] AC 521, *Re Barings* [1998] 1 All ER 673 and *Jet2*. HMRC argued that the whistleblowing policies required an independent investigation and report. In its submission, because a report had to be produced irrespective of legal advice, the dominant purpose of the Hogan Lovells report was compliance with whistleblowing obligations and fact-finding, rather than the provision of legal advice. HMRC maintained that Hogan Lovells had effectively been retained to conduct a whistleblowing investigation and produce findings and that the report should be treated analogously to the report in *A v UBS*.

30. HMRC pointed to contemporaneous documents recording references to an "independent investigation of facts", statements that findings would be discussed with the whistleblower, and descriptions of the investigation process which, it submitted, were inconsistent with the report being privileged legal advice. It argued that the report represented the end product of an investigation rather than legal advice itself and relied on authorities concerning the "fruits" or "end products" of legal advice.

31. Finally, HMRC challenged the redactions made in the whistleblower notes, interview notes and email chains. It submitted that Barclays had not adequately explained how the redacted passages would reveal the substance of privileged communications and that its description of the basis for privilege was insufficiently particularised. In HMRC's submission, Barclays had failed to establish that the secondary evidence principle applied to those passages.

Discussion

Slaughter and May opinion

32. There was no dispute that the Slaughter and May opinion was privileged legal advice when created.

Hogan Lovells report, including annexes, and the executive summary of the report

33. Unlike HMRC, I have been provided with copies of the Disputed Documents and am therefore, having regard to the principles described above, in a better position to determine whether or not legal professional privilege applies as the applicant contends it does.

34. I have carefully considered each of the Disputed Documents in the light of the submissions made and case law discussed by the parties and in particular the question posed by Lord Scott in *Three Rivers (No 6)*: that is, whether the advice relates to the rights, liabilities, or obligations of Barclays either under private law or under public law and, if it does, whether the occasion on which the communication takes place and the purpose for which it takes place is such as to make it reasonable to expect the privilege to apply.

35. Having adopted such an approach in relation to the Disputed Documents (and being mindful of Rule 9 of the 2009 Regulations which limits the extent to which I can discuss those documents) I am, on balance, satisfied that LAP attached to the Hogan Lovells report, including the relevant annexes, and to the executive summary of that report, on creation.

36. The fact that these documents were created as a result of an employment law dispute does not preclude LAP from applying. The position here is rather different to that in *A v UBS*, for example, where the report was produced to investigate how certain matters had been handled internally (that is, to establish the facts) rather than consider whether particular arrangements complied with legal requirements (that is, to provide an opinion on the law as applied to the facts). Whilst the context might appear superficially similar, I do not agree that the connection to the whistleblowing investigation in this case means that these documents' dominant purpose must have been to comply with the whistleblowing policies. The policies did not require that an external firm be used to carry out an investigation of a whistleblowing matter and I consider that it is clear from the content of the documents that the purpose for which they were created was to provide legal advice and that this was the dominant purpose.

37. In the context of this appeal, and having reviewed the documents, I consider that the Hogan Lovells report, relevant annexes and summary are not the "fruits" or "end products" of legal advice (that is, simply the end product of the investigation) but, rather, are themselves legal advice and were privileged when created.

38. For the avoidance of doubt, this is a fact-specific conclusion which is based on the contents of the specific documents; it is not a general finding which could have wider application.

Interview notes

39. JP interview - redaction of comments on Slaughter and May legal opinion (paras 126-129)

(1) Noting that the secondary evidence principle protects documents that "reveal, evidence, summarise or betray the substance of privileged legal advice", I do not consider that this redaction falls within that principle. The comments which have been redacted express concern that the legal advice does not take into account particular issues, and that the advice is based on incorrect information. The redacted material does not disclose what the legal advice does take into account, nor does it give any detail of the legal advice. In my opinion, the redacted paragraphs do not contain information which would enable one to infer the substance of the advice and so are not privileged information.

40. GRJ/RB interview

(1) Redactions in section on "main purpose test" (para 88), section on "unallowable purpose" (part of para 125), section on "Bookings/KERTSs" (part of para 137), section on "DOTAS, GAAR and Code of Practice" (paras 148-150) and section on "Bank of England" (para 152)

(a) On balance, I consider that these redactions do fall within the secondary evidence principle such that the information redacted is privileged.

- (2) Redaction in section on “Swap pricing” (part of para 215)
- (a) The redacted section states only that there “might have been” email correspondence with a lawyer. Even considering the context of the section, I do not consider that the redaction contains information which would enable one to infer the substance of any legal advice (indeed, it is not clear that it even shows the existence of any legal advice) and as such, I do not consider that the redaction contains privileged information.
41. JPW interview - redactions in paras 41, 47, 48, 52
- (1) On balance, and given their context, I consider that these redactions fall within the secondary evidence principle such that the redactions are appropriate.
42. Emails with Hogan Lovells
- (1) Redactions in emails of 11 September 2016 at 17:45, 8 September 2016 at 11:35am, 24 August 2016 at 20:31
- (a) On balance, and given their context, I consider that these redactions fall within the secondary evidence principle such that the redactions are appropriate.
- (2) Redaction in email of 26 July 2016 at 20:19
- (a) This redaction, even in the wider context of the email, does not contain information which would enable one to infer the substance of any legal advice. It refers only to the opinion being technical rather than discursive; that discloses nothing more than the style of the opinion and not the substance of any advice contained in the opinion. As such, I do not consider that the redaction contains privileged information.
43. The redactions which I have concluded are not subject to LAP (that is, those referred to in paragraphs 39(1), 40(2) and 42(2) above) are referred to below as the “Excluded Redactions”.

Has privilege been lost or waived?

Submissions

44. On confidentiality, Barclays argued that privilege is not lost merely because legal advice is disseminated within a large corporate group. Relying on authorities such as *The Good Luck*, *Gotha*, *Jet2* and related cases, it submitted that privileged material may be shared with employees who require access for the performance of their functions without any loss of privilege, provided confidentiality is maintained. Barclays characterised HMRC’s submissions as commercially unrealistic, particularly in relation to a multinational organisation employing many thousands of staff. It argued that the relevant test is not the number of recipients but whether dissemination occurred consistently with the preservation of confidentiality.
45. In respect of the Hogan Lovells materials, Barclays submitted that circulation was restricted to a small group of legal, compliance and business personnel with a need to know. Access was password protected, recipients were bound by contractual and policy-based duties of confidentiality, and considerable efforts had been undertaken to identify those who had received the documents. Similar submissions were made concerning the Slaughter and May opinion, which Barclays said was stored on restricted drives and accessible only to those requiring access in the course of their work. Barclays argued that there was no legal requirement to maintain an exhaustive audit trail of every access to privileged documents.

46. Barclays further submitted that no waiver occurred during the Employment Tribunal proceedings. It contended that the Employment Tribunal proceedings concerned only whether JP had suffered detriment because of protected disclosures. The correctness of his tax concerns and the substance of the legal advice were not issues before the Employment Tribunal. Barclays argued that references in pleadings, evidence and submissions to the investigation or its outcome were merely narrative background and did not amount to reliance on privileged advice to advance a case on an issue before the Employment Tribunal. The relevant documents were not placed before the Employment Tribunal and their contents were not deployed in the proceedings. Barclays therefore submitted that there had been no waiver or other loss of privilege.

47. HMRC submitted that Barclays had failed to establish that confidentiality was preserved. It argued that the Slaughter and May opinion had been widely accessible within various Barclays Group entities and stored on shared drives without adequate evidence demonstrating who had access, why access was granted or on what terms. HMRC also contended that JP's access to, use of and discussion of the opinion indicated that confidentiality had not been adequately controlled. Similar criticisms were made in relation to the Hogan Lovells report and executive summary. HMRC argued that Barclays was unable to identify all recipients and did not possess a proper audit trail for circulation of the documents.

48. HMRC further submitted that even if privilege initially attached, privilege had been waived during the Employment Tribunal proceedings. It argued that repeated references to the findings and conclusions of the investigation appeared in pleadings, witness statements, oral evidence and submissions. According to HMRC, BBUK relied upon the findings of the Hogan Lovells investigation, and in some instances the Slaughter and May opinion, to support its case on causation in the Employment Tribunal, namely that any difficulties experienced by JP arose from his reaction to contrary views rather than retaliation for whistleblowing. HMRC submitted that the law of waiver did not require quotation from a specific document or disclosure of detailed contents. Reliance on the conclusions or effect of legal advice could suffice. It relied principally upon *PCP* and *PJSC Tatneft v Bogolyubov and others* [2021] 1 WLR 1612.

49. HMRC also contended that references made in open Employment Tribunal proceedings had deprived some of the information of any continuing confidentiality. It argued that matters such as the existence of the Slaughter and May opinion, its subject matter and JP's criticisms of it had entered the public domain through the Employment Tribunal proceedings.

Discussion

Generally

50. Case law has established that privilege is not lost simply because legal advice is passed on internally within an organisation (*USP Strategies Plc* at [19(c)], following other earlier cases including *The Good Luck*), noting that there is “no good reason or valid reason for the suggestion that the confidence which it is accepted attaches to the lawyer client communication itself, should somehow be lost once the advice is put to the commercial use for which it was sought in the first place”. This was confirmed in *Jet2.com*, which also noted that “there are circumstances in which the privilege will attach to the dissemination of advice to third parties (*USP Strategies* and *Gotha City...*)”

51. The communication of any of the privileged material within Barclays did not therefore axiomatically mean that privilege was lost in that material. In *Gotha City*, the Court of Appeal noted that confidentiality could be implied where it would be expected to be assumed by those involved.

Slaughter and May opinion

52. Barclays' evidence was that the Slaughter and May opinion was accessible on:

(1) a shared drive in the Barclays Group's electronic document management system, stored in a section which contained documents relevant to the bank's collateral management business in Luxembourg. At the relevant time it was stored in a folder marked "Tax"; it has since been moved to a folder marked "Privileged Legal Advice" as part of a reorganisation of the document management system which consolidated legally privileged documents into a single location. Access to the drives throughout the relevant period was restricted to Barclays Group employees with specific permission. Barclays' evidence was that these were individuals who may require access to the documents in order to perform their roles.

(2) The document was shared with members of the Group Tax function in London who had responsibility for day to day oversight of Luxembourg operations from a tax perspective. One of these individuals saved a copy of the Opinion on a drive used by Barclays Group's Tax function in London. The evidence was that access to that drive was restricted to members of the Group Tax function who required it for the purposes of performing their roles.

53. The evidence identified those who had current permissions to these folders. The Barclays Group's systems did not enable them to identify the individuals who had historically been given the required permissions to the relevant folders, or to identify which of those might have accessed the opinion document.

54. Barclays' evidence was also that confidentiality was a standard term of all Barclays' employment contracts.

55. I note HMRC's criticism of this evidence contended that it was inadequate to show that confidentiality had been maintained as Barclays were unable to identify all who had had access and did not have a proper audit trail for circulation of the documents. They contended that, for example, it was clear that JP had obtained a copy of the opinion. Barclays contended (and it was not disputed) that JP had access to the document because he was part of the Barclays Group team working on the relevant transactions to which the opinion related.

56. There is nothing in case law that requires an audit trail to be maintained or a register of all those with access: what is required is that confidentiality is maintained. It was not disputed that Barclays Group employees are under duties of confidentiality, set out in contracts. In my view, the evidence is consistent with the documents retaining confidentiality: the evidence was clear that only those with specific permission could access the relevant drives, and permission was given to those whose role required such access. Whilst historic information was not available, the ten individuals stated to have current permission were all within the Barclays Luxembourg team. There was no reason to suggest that any different approach was taken historically and so, noting that privilege is not lost by a document being put to the commercial use for which it is obtained, I consider that on the balance of probabilities, the Slaughter and May opinion did not lose confidentiality and so did not lose privilege.

During the whistleblowing process

Hogan Lovells report, relevant annexes and executive summary

57. Barclays' evidence was that the annexes were not circulated separately to the report, which was marked 'privileged and confidential' on the cover. The report was protected by a password which was separately provided. The executive summary was also password protected

and, although it was not marked confidential, those receiving it were usually advised that it was confidential. There was a detailed process in place to ascertain who had access to the report.

58. Barclays' evidence was also that the executive summary was likely to have been saved to the whistleblowing team case management system; this could not be confirmed as the individual giving evidence did not have access to that system. It was contended that permissions to access documents within that system were on a need-to-know basis, to maintain confidentiality in line with whistleblowing policies.

59. Barclays' evidence was that the investigation was confidential, in accordance with the relevant whistleblowing policies and that the circulation of these documents was generally restricted to those who needed the documents in the course of the roles within the Barclays Group. On review, it had been established that these documents had also been provided to other individuals:

- (1) to a personal assistant of one of the individuals to be printed and bound for that individual's review;
- (2) to two members of the Barclays Group compliance team, one of whom who had previously received a draft;.
- (3) a copy of the executive summary had been provided to the in-house solicitor for the Barclays Group dealing with the Employment Tribunal proceedings. Her evidence was that this would have been enable her to be satisfied that the whistleblowing qualified as a protected disclosure and that the executive summary was sufficient for this purpose. She confirmed that the executive summary had not been disclosed in the course of the Employment Tribunal proceedings.

60. In the specific instances identified, I do not consider that passing a copy to a personal assistant for printing and binding for the use of the individual for whom that personal assistant works is sufficient to deprive the documents of privilege. Similarly, the provision of the executive summary to the Barclays Group in-house solicitor and the provision of the report to two members of the Barclays Group compliance team were not, in my view, actions which deprived the document of privilege, given that they were provided in a context in which confidentiality would be expected to be assumed by those involved. This is both because of the Barclays Group general contractual terms requiring confidentiality from employees and also from the nature of the work involved in the relevant roles.

61. More generally, for the same reasons as set out above in respect of the Slaughter and May opinion, I consider that on the balance of probabilities, those documents which were covered by privilege at creation did not lose confidentiality and so did not lose privilege.

Emails and interview notes (other than the Excluded Redactions)

62. These were created in the course of an investigation which was covered by the confidentiality requirements of the Barclays Group's whistleblowing policies. No specific submissions were made to content that there had been any loss of confidentiality prior to the Employment Tribunal proceedings. I find that they did not lose confidentiality and so did not lose privilege.

During the Employment Tribunal proceedings

63. The bundle contained the index of documents in the Employment Tribunal proceedings, informal notes of the Employment Tribunal proceedings, BBUK's skeleton argument and draft written closing submissions in the Employment Tribunal proceedings, some of the witness

statements from the Employment Tribunal proceedings and the decision in those proceedings. None of the Disputed Documents are referred to in the index and there is nothing in any of the documents before me to indicate that the Disputed Documents were otherwise placed before that Tribunal. Accordingly, I find that the Disputed Documents were not placed in evidence before the Employment Tribunal.

64. This is not particularly surprising, as BBUK had accepted that JP had made protected disclosures and so there was no need for the Employment Tribunal to examine the whistleblowing allegations and or reach any conclusion as to the contents of those allegations or the resulting investigation: the issues for determination by the Employment Tribunal were solely in respect of whether JP had suffered a detriment as a result of the protected disclosures. The Employment Tribunal finding that there were protected disclosures specifically follows BBUK's acceptance of that and does not refer to any documents or other evidence or provide any other reasoning for that finding.

65. The Hogan Lovells report is referred to in the notes and the decision in a narrative context, noting that a law firm had been hired to investigate the whistleblowing and that they had been asked to discuss the outcome with JP. The conclusions of the report are referred to at a very high level in the decision in the context of a comment that JP did not accept the findings of the investigation, which were that there had been no breach (para 99 of the decision). The Employment Tribunal made no findings in respect of the investigation or report and, as noted above, did not need to do so as there was no dispute that there had been a protected disclosure. To the extent that JP's refusal to accept the findings was put forward by Barclays in respect of causation in respect of detriment, I note that their primary argument in those proceedings was that there was no detriment, and the reference to the disagreement was a minor point in their submissions as to the description of the working relationship between JP and his Barclays' colleagues. It was a similarly minor point in the decision.

66. Accordingly, I find that BBUK did not rely upon the Disputed Documents in order to prove any issues which the Employment Tribunal were required to determine.

67. The High Court in *SL Claimants vs Tesco* [2019] EWHC 3315 (Ch) concluded that confidentiality had not been lost in a document (the "Majid Note") which was produced in evidence and at least one-third of which the judge had been asked to read to himself. The decision concludes (at [42]):

"(2) ...Whether references (whether by the court or counsel) are such as in fact to constitute such an exposure of the document to the public that confidentiality in it is lost is a matter of degree. In this case, the references did not, either in terms of their detail or their extent, amount to a loss of confidentiality in the document itself.

(3) Noting that in fact no such application was made, I do not think it likely that an application under the Criminal Rules would have led to disclosure of the Majid Note as being necessary in order to understand what was going on. I do not think that the civil rules require any different approach.

(4) The references to and the judge's reading of the document do not require its disclosure to enable the public to understand the approach of the court to the procedural decision before it ...

(5) Confidentiality in the document was not lost."

68. Bearing this in mind, I consider that there is nothing in the Employment Tribunal decision that could require disclosure of the Disputed Documents for the public to understand the approach of the court to that decision (indeed, it would be surprising if it were required, given

my finding that the Disputed Documents were not even produced in evidence to the Employment Tribunal).

69. I find the references in those proceedings to the existence of the investigation, the fact that advice had been obtained, or the fact that conclusions had been reached, did not deprive the Disputed Documents of their confidential character and so they did not lose privilege where LAP existed at creation. I also find that no waiver of privilege arose from those references, including the references to the Slaughter and May opinion in JP's evidence to the Employment Tribunal.

Conclusion

70. I conclude that the Disputed Documents (other than the Excluded Redactions) are subject to LAP and that privilege has not been lost or waived. Accordingly the applications succeed in part and the applicants are not obliged to disclose any part of the Disputed Documents other than the Excluded Redactions to HMRC.

Right to apply for permission to appeal

71. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

Release date: 7 OCTOBER 2026