

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

**B E T W E E N :**

**JOLYON TOBY DENIS MAUGHAM QC**

**Claimant**

**- and -**

**UBER LONDON LIMITED**

**Defendant**

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**WITNESS STATEMENT OF**  
**JOLYON MAUGHAM**

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I, **JOLYON MAUGHAM**, of Devereux Chambers, Queen Elizabeth Building, Temple, London EC4Y 9BS will say as follows:

1. I am the Claimant in this action. Save where otherwise stated, the information and facts set out in this statement are based on my own knowledge and are true to the best of my belief.
2. I make this statement in support of my application that the Court should in this claim make an order capping the costs of the Defendant Company that I may be required to pay in the event of the claim being lost.
3. I am a Queen's Counsel. I was called in 1997 and was awarded Silk in 2015. I practise as a litigator in the tax field from Devereux Chambers, Devereux Court, London WC2R 3JH.

4. Alongside my practice, and occupying substantially more than half of my working life, I write (and campaign) on the intersection between law and politics with a particular focus on tax, workers' rights, intergenerational fairness, and Brexit. I am the founder and director of the Good Law Project Limited (the "GLP") which, in part, supports court process in those fields to achieve progressive law change. It is a not for profit organisation. Its income is presently around £25,000 per annum comprised entirely of voluntary subscriptions from members of the public. I receive no payment from it for my time involved in its activities.

#### The Good Law Project

5. This litigation will be the first case undertaken by the GLP. The GLP seeks to litigate claims to provide the checks and balances to executive power and to ensure the rule of law. It seeks to support or bring cases that touch upon the lives of ordinary working people. It will bring structural cases; not merely cases affecting large numbers of people but cases that affect the way in which the organs of society function. It presently works across the themes or strands that I have identified in the preceding paragraph. The GLP will also consider issues touching on social welfare law and housing and healthcare.
6. Because the GLP recognises that there must be a democratic mandate for law change it actively seeks to engage with the public around the cases that it litigates. This recognition finds particular expression in the way in which it seeks to fund litigation. The cases it brings will generally be crowdfunded. The question whether I am able to engage members of the public in the importance of the issue that the GLP is litigating will act as a desirable control on whether the issue should be litigated.
7. Cases satisfying these criteria will be relatively few and far between. In those the identity of the Claimant will not be of importance save that they will be the person named as Claimant and they must have locus and a justiciable right to be enforced. Otherwise, like myself in this action, Claimants will act merely as a token for the values sought to be protected or advanced by the litigation and as a representative for those who cared sufficiently about the issues raised by the litigation to fund it.

8. The GLP project is a new entity. I expect to begin to develop a proper governance framework for the GLP with, in particular, a board or advisory board to help select test cases. In the meantime, I have asked a colleague to draft a new memorandum and articles and these are in the final stages of review before submission to Companies House.

My work in the field of tax

9. Because I make this witness statement in connection with litigation against Uber London Limited (“Uber”), it may be useful for me to say some more about my work in the tax field. Since 2013 I have been writing about and campaigning for better legislative and non-legislative responses to tax avoidance and tax evasion and for “better” tax policy. I put the word “better” in quotes because, of course, it represents a subjective and impressionistic assessment. The policies I campaign for deliver no personal financial benefit to me. Indeed, they are very often against my personal financial interests and those of potential clients. It is for the latter reason that the fact of my campaigning has a deleterious effect on my income.
10. I believe it is fair to say that my work on tax policy has had an impact, and (I believe) a positive one. I have advised the Labour Party on tax policy prior to the 2015 election. I was responsible for the fact and form of at least one major tax policy initiative. I briefly advised the Labour Party on tax policy after the 2015 election. I had good relations with David Gauke whilst he was Financial Secretary to the Treasury under George Osborne and would, on occasion, communicate direct with him. However, my public stance on Brexit has, I believe, inhibited my ability to work with the Conservatives on tax policy. However, I believe I can demonstrate a direct impact on legislative measures introduced under David Gauke’s time in office. I have, and maintain, good relations with certain of the Commissioners of HM Revenue and Customs and senior civil servants at HM Treasury with responsibility for tax policy. I have briefed senior civil servants on tax policy. I could be more specific about these matters but want to avoid causing any difficulty to those I do and have worked and communicated with. I am, I believe, amongst the better known commentators in the tax field.

This litigation

11. In this case I ask Uber to provide a copy of a VAT receipt for a short taxi ride I took with it from my Chambers to a client. Immaterial complexities aside, if *Uber* has “supplied” me with a service – as that word is used in a VAT context – then it has a statutory obligation to provide me with a VAT receipt. Uber says that the service was supplied not by it but by a taxi driver for whom it acts only as agent. In different but analogous legal contexts Uber’s analysis of the nature of the relationship it has with users of Uber taxi rides has recently been rejected by both the Employment Tribunal and an Advocate General to the European Court of Justice.
12. I believe – and as a QC specialising in tax I have some reasonable professional basis for this belief – that Uber has made a taxable supply of VAT purposes and that I have an entitlement to a VAT invoice.
13. The litigation touches upon themes in which I have a long and demonstrable interest. They are complex and, so as not to overburden the court, I will deal with them briefly.
14. The first is a question of public trust. There is a widespread public perception that we in the United Kingdom tolerate US tech companies, in particular, engaging in financially meaningful tax avoidance. I believe this public perception damages what is described as ‘tax morale’ – the propensity of others to pay their taxes. I also believe – although my basis for this belief is more impressionistic – that this public perception damages trust in the political establishment in a way that over time erodes the proper functioning of our democracy and society.
15. The second is a question of the attitude of HMRC and the Government to the question of public trust. I believe that the perception I have outlined in the preceding paragraph has, at the very least reasonable, foundation in reality. On the basis of evidence I have seen it is my view that some large US tech companies pay very substantially higher amounts of corporation tax in other EU jurisdictions than they pay here. Those differences cannot be explained by different rates or structures or tax laws or other objective factors of which I am aware. These differences are reported by our national media which, in turn, adds to public distrust in the establishment. But

they also pose a question. If the perceptions are well-founded HMRC is failing properly to apply the law. If they are ill-founded then (I have argued) the damaging public perception should be addressed by HMRC engaging more meaningfully with public concern. However, the law is such that comment by HMRC would amount to a criminal offence and this, I believe, is a failing in our law.

16. For Uber, the amount of tax is likely to be substantial. If Uber has an obligation to issue me with a VAT receipt, then the same will likely be true for all other recipients of its supplies. This could well mean – and I advance this figure on the basis of calculations based on numbers I have personally checked with a senior Uber Executive – a historic liability to VAT output tax to the Exchequer plus interest and any penalties. There will then be substantial on-going future receipts for the Exchequer.
17. There is no public sign that HMRC is investigating Uber’s VAT liability or taking any action in respect of it. Of course, the very strict duties of confidentiality under which HMRC operates precludes it from making any public statement in advance of Uber appealing against any assessment to VAT that HMRC may make. However, Uber has operated in the UK for five years without charging VAT and it continues to do so.
18. There is no suggestion in its most recently-filed accounts (for the year to 31 December 2015) that it has made any provision for a VAT liability or expects to have one. Those accounts for were signed on 30 September 2016 and record no significant post-balance sheet events. These are factors that tend to suggest that HMRC is not taking an interest.
19. Of course, these are not matters for the court in the present litigation. The question before the court is a narrowly focused mixed question of fact and law about who is making the supply to me: Uber or its taxi drivers. But they do help to explain my purpose in bringing this case. My purpose is to shine a light on these issues and to seek to drive public understanding and engagement and, through it, political engagement with these issues which I believe to be of profound public importance. All of these themes routinely figure in the public discourse around tax avoidance,

public trust in the 'establishment' and Uber. This case has – even before it was issued – attracted considerable public interest in the national and international media.

20. I have considered whether these points might be better made by judicial review proceedings. There is some precedent for this. Giving permission to the so-called UK Uncut Legal Action, Simon J, as he then was, recognised that there was plainly a public interest in allowing a pressure group judicially to review HMRC's actions vis-à-vis Goldman Sachs. However, to take that step would be to point a finger at only a small part of the picture I have outlined above. The political ramifications of a finding by a court – which, as I have said, I believe to be likely – that Uber is making taxable supplies and the Government has failed to collect the consequential VAT would be substantial. My hope is that, as the litigation progresses, pressure will build on the Government to engage with the undoubted public concern around tax avoidance generally and Uber's specifically. I believe that this is a far more effective means to bring the issues I have outlined above into the public domain than a judicial investigation into whether HMRC's conduct falls below a (necessarily, given the entirely appropriate split of competencies between the judiciary and executive) low standard.
21. I should say, for the record, that my personal financial interest in the claim is literally pennies. The consequence me receiving a VAT invoice will be an entitlement to recover £1.06p in input tax. But the expenditure deductible in calculating my taxable income in the period will be £1.06 lower, so my income will be that sum higher and so my net gain, once income tax and national insurance contributions are taken into account will be 56p.

#### My resources and how the case is funded

22. As I presaged, above, this cases is crowdfunded. Some 3,400 separate donations were made raising £107,650 on the "Crowd Justice" portal (before costs). Separately a donation of £20,000 was made to GLP to support the Uber case by an organisation connected with the black cab trade (and which has asked to remain confidential). It may be useful for me to make a few observations about the exercise by which the money was raised:

- (i) I attach as Exhibit "JM1" a copy of the 'pitch' the GLP made to the public for crowdfunding;
- (ii) although 3,400 separate donations (an average donation of just below £32) were made, a number of individuals made multiple donations;
- (iii) it is impossible to know what proportion of the donations originated with the black cab trade, but based on my engagement with the trade through the GLP's twitter feed, I would expect that proportion (both by number and value) to be well above 50%; and
- (iv) I was clear on the GLP's twitter feed and in conversations with representatives of the black cab trade that, although the action could deliver benefits for them (by compelling Uber to charge VAT) that was not my purpose in bringing the action. I had and have no personal connection with the black cab trade.

23. As I have said above, it is through crowdfunding that I expect and, for reasons I have stated, want the GLP to fund future legal actions. The way in which I have tended to work and envisage working is to identify cases that satisfy the criteria set out above. Then seek to form a view – usually with the benefit of Counsel and solicitors – of the merits of the case. If, after that process, I am of the view that the case has legal merit or there are other compelling reasons for taking it I would then ask the public to fund either formal legal advice on merits or all of the costs of the case.

24. I have been clear to the Counsel and solicitors I have instructed that I will not pay normal commercial rates. This is because I do not want it to be able to be said that the GLP is a 'trough' at which lawyers feed. But also because I do not believe it to be necessary. If you find the 'right' cases it is generally possible to persuade solicitors and Counsel to act at below market rates. Here, I have indicated that I will try to pay 'Government' rates (between £60 and £120 per hour for juniors and around £200 per hour for Silks) to Counsel but there is a general understanding that depending on the costs order they may not get paid at all. Our solicitors have also agreed to work on a similar basis.

This application

25. This leads me to the issue which is the subject of this witness statement and application.
26. It is possible to seek to raise, by way of crowdfunding, your own costs. Depending on the attractiveness of your 'pitch', your personal reputation, and the amount you are seeking to raise you may succeed. It is also possible to seek to raise a sum in respect of the other side's costs. But, here, you face two difficulties. First, you cannot know what the other side will spend and so you do not know what you might need to raise. And, second, the other side's costs might far exceed any sum that you might raise. This is a barrier to access to justice which has been expressly recognised by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals in their joint statement "Transforming our justice system" dated September 2016 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/553261/joint-vision-statement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf) at p11, which has also led to the review being carried out by Lord Justice Jackson into the possible extension of fixed recoverable costs in civil litigation generally.
27. Uber have engaged Herbert Smith Freehills LLP and have written two letters stating – I intend no criticism – that their client will “seek to recover from [me] any costs it incurs in defending its claim.” Uber's value is generally thought to be around \$70bn and, given the size of its potential liability here (and any judgment against it here would raise similar problems for it in other EU jurisdictions operating VAT), it is likely to litigate sparing no expense. Bearing in mind what a leading Tax Silk would charge for a case of this nature, it is perfectly reasonable to anticipate that Uber's costs could reach £1m at first instance alone.
28. I am – by most standards – relatively wealthy. I would estimate the joint wealth of my wife and myself to be between ~~£10m and £15m~~. Our net liquid assets are around ~~£5m~~. The remainder is represented by a three bedroom flat in ~~London~~ and a property in ~~London~~. My share in our joint wealth is much smaller, around ~~£1m~~ but given that she and I do not manage our financial affairs separately the distinction



is in many senses meaningless. My wife also has a pension – I do not – the value of which I do not know.

29. It is also relevant to mention that I am a father of three young children, all at primary school. I expect my income this year to be in the region of ~~£100,000~~ net of expenses. That is a handsome sum by normal standards albeit significantly lower than I have earned in past years and could earn in this due to the amount of time I spend on the activities outlined at paragraphs 2 to 6 above.
30. I will certainly not be able to continue as a litigant without the benefit of some form of meaningful costs protection. Were this application to be rejected it might, depending upon the grounds of rejection, be possible for the GLP to find another claimant to bring the same claim. Of course, this is a matter for the court to assess but, it is difficult for me to understand what point substituting a different claimant might serve. As I have said, I have materially no interest in the outcome beyond that of any of the other thousands of people who funded it and, I believe, society generally.

**Statement of Truth**

I, **JOLYON TOBY DENNIS MAUGHAM**, believe that the facts stated in this statement are true.

Signed



Dated: 15 June 2017

**Claim No HC-2017-001496**

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**Solicitors for the Claimant**