

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

Claim No.: CO/ /2019

BETWEEN:

THE QUEEN on the application of

GOOD LAW PROJECT LIMITED

Claimant

and

THE COMMISSIONERS FOR HER
MAJESTY'S REVENUE AND CUSTOMS

Defendant

WITNESS STATEMENT OF JOLYON MAUGHAM QC

I, Jolyon Maugham QC, Director of Good Law Project Limited ("GLP"), will say as follows:

Introduction

1. I make this statement in support of GLP's application for a costs capping order. I will address the following matters in the following order:

(a) details of GLP's legal status, constitution and objects;

- (b) an explanation of the purpose of the litigation and why it would be appropriate for GLP to represent the interests of other persons or the public interest generally;
- (c) GLP's assets, liabilities, income and expenditure;
- (d) the amount of support likely to be provided and the likely cost of the proceedings;
- (e) GLP's other experience of protective costs orders; and
- (f) the effect of not granting a costs capping order.

(a) Legal status and structure of Good Law Project Limited

2. Good Law Project Limited (Company Registration Number 10556197) is a company limited by guarantee without share capital. It was incorporated on 10 January 2017. It is not a registered charity. The company has four directors – Lord Wood of Anfield, Sam Smethers, Rupert Evans and myself (“the Board”). None of us receive any remuneration for our respective roles. I am the sole member of the company. The certificate of incorporation is at Exhibit JM/1 to this statement. I have attached as Exhibit JM/2 the Articles of Association which contain a so-called ‘Asset Lock’ providing, broadly, that any ex gratia transfer of the assets of GLP will be to Public Law Project, a registered charity.
3. I set up GLP with the intention of using the law to help deliver progressive values through public interest litigation. A High Court decision in *Maugham v Uber London Limited* (of Mr William Trower QC sitting as a Deputy High Court Judge) [2019] EWHC 391 (Ch) (the “Uber case”) states of me and GLP:
 6. *Mr Maugham is a Queen's Counsel with a specialist practice as a tax litigator. He spends a substantial part of his time writing and campaigning on the intersection between law and politics with a*

particular focus on tax, workers' rights, intergenerational fairness and Brexit. He is also the founder and director of the Good Law Project Limited ("GLP"), a not-for-profit organisation which supports court process in those fields in order to achieve progressive law change. GLP has an income of around £25,000 per annum comprised of voluntary subscriptions from members of the public.

7. *Since the commencement of these proceedings, GLP has obtained three PCOs, all in public law litigation in a Brexit context. One was granted in a claim against the Electoral Commission seeking a judicial review of its failure to investigate matters relating to referendum donations, another in Scottish proceedings to establish whether the Article 50 notice was capable of being withdrawn and a third in judicial review proceedings against the Department for Exiting the European Union, seeking to compel the production of certain studies into the effect of Brexit on different regions and sectors of the economy.*
8. *Mr Maugham explains in his evidence that GLP recognises the need for a democratic mandate for law change, and so actively seeks to engage with the public around the cases that it litigates. He says that a particular expression of the need for a democratic mandate is its litigation funding methods, which generally involve crowdfunding.*
4. GLP's crowdfunding campaigns typically attract donations numbering in the thousands with an average donation of approximately £35 each. However, as I shall explain, each case is different.
5. GLP looks for cases that provide checks and balances to executive power and which secure 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 Government functions. In addition to two cases in

connection with the proper functioning of the tax system it has brought other litigation raising issues of electoral law, workers' rights and the treatment by Government of non-UK nationals. However, the cases for which it is presently best known are our successful challenge to the Electoral Commission (*R (oao Good Law Project) v Electoral Commission* [2018] EWHC 2414 (Admin)) ("the Electoral Commission case") and the case it promoted (and in which I was a petitioner) which led the Court of Justice of the European Union to rule that the United Kingdom had the unilateral right to revoke the Article 50 notification (*Case C-621/18 Wightman and others v Secretary of State for DExEU*).

6. GLP is a non-profit (by which I mean it is not operated to generate a surplus), organisation funded by subscriptions and donations. I devote considerable time and energy to GLP – I would estimate about 75% of my working life – but receive no payment for doing so. GLP currently raises funds on a case-by-case basis, and if a case raises insufficient funds it will not generally be taken by GLP. Therefore, although I have control of GLP, my power to decide which cases to pursue is restricted. If a case does not achieve sufficient public interest and funds, GLP will not pursue it. Any prospective new cases must also receive the unanimous consent of the Board, which assesses those cases against agreed criteria.
7. I hope that in the future GLP will increase its core funding and that more people will become subscribers – styled as "members". Currently there are around 650 "members", giving between £2 and £50 per month, and a mailing list of around 25,000 people. Although I hope I may be paid a salary for my work - I would like GLP to be sustainable in the long term which means having money to pay someone fulfilling my role - that is not likely to be possible for the foreseeable future.

(b) Purpose and standing

8. It is not the purpose of this witness statement to argue the underlying merits of the litigation but it is important for me to start by saying that 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 for VAT purposes. I am also aware from two others QCs working in the tax field that they hold the same belief. I have never had it suggested to me by a colleague at the Bar that the view I hold is wrong.
9. The litigation touches upon themes in which I have a long and demonstrable interest. So as not to overburden the court I will deal with them briefly.
10. The litigation revolves around questions 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.
11. Figures such as Meg Hillier, MP, Chair of the Public Accounts Committee and Margaret Hodge MP, her predecessor, have expressed concern about the inaction of HMRC. The story has been covered by newspapers such as the Financial Times and the Sunday Times. HMRC have been asked about their failure to raise protective assessments in the Public Accounts Committee. And there is also direct evidence of political interference with the HMRC’s functions in the case of US tech companies: a senior HMRC official was recorded saying that “the Treasury didn’t want us to be too hard on Amazon” (see <https://www.thetimes.co.uk/article/tax-official-admits->

[treasury-told-us-to-give-amazon-an-easy-ride-over-vat-gq0p0v5jj](#)). This recording prompted Meg Hillier, Chair of the Public Accounts Committee to say that the recording reflected MPs' concerns that big business was "getting away with it" and adding "This tape highlights that there was a lack of urgency to tackle the big platforms."

12. HMRC's basic position – that it does not have power to protect the Exchequer against the passing of time limits by raising protective assessments – is remarkable and the amount of tax at stake is substantial. In the Uber case I suggested – without contradiction by Uber London Limited – that its historic VAT liability is in the order of £1bn over four years. If this figure is right it means that every month that passes without an assessment being raised leads to a loss of tax to the Exchequer of, conservatively, £20m.

13. I was the Claimant in the Uber case – not the GLP – because GLP is not VAT registered and so has no statutory right to assert an entitlement to a VAT invoice. However, the monies were crowdfunded in GLP's name.

14. 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. What is certainly true is that the policies I campaign for deliver no personal financial benefit to me. Indeed, they are very often against my personal financial interests. And, both by reason of the time this work takes and the impression of me that this work creates in the sector in which I work, the fact of my campaigning has had a significantly deleterious effect on my income. A colleague and friend of mine at the tax bar has described [www.waitingfortax.com](#) – where my work in this field started – as the long suicide note of a once successful practice.

15. My work in the sphere is widely respected. This can be seen, for example, from the fact that I was invited in 2014 to give to the Institute of Chartered Accountants for England and Wales the annual Hardman Lecture. That lecture is the most important public address in the tax field and has previously been given by Lord Howe, Sir Gus O'Donnell, Dave Hartnett and the Rt Hon David Gauke. I gave that address on 11 November 2014 and the programme records:

"Tonight's lecture is being given by Jolyon Maugham, and entitled Tax Avoidance – game over? In his lecture Jolyon will be asking whether the changes in the Finances Acts 2013 and 2014 have finally turned the tide against tax avoidance or whether more still needs to be done to address egregious tax avoidance."

I have also given evidence to the Culture, Media and Sport Select Committee on tax avoidance.

16. I believe it is fair to say that my work on tax policy has had an impact, and (I believe) a positive one. I advised Ed Miliband's Labour Party on tax policy. I was responsible for the fact and form of at least one major tax policy initiative. And I briefly advised Jeremy Corbyn's Labour Party on tax policy. I had good relations with David Gauke whilst he was Financial Secretary to the Treasury under George Osborne and would, on occasion, communicate directly 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 watch. 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 would say, amongst the best known commentators in the tax field. I am (as of September last year) not a member of any political party.

17. GLP is liable to pay – and has paid – corporation tax. And I am not aware of

any other person or organisation which is better placed to take forward this issue, or which would take forward this issue if GLP did not do so.

18. I suppose it is just about possible to argue that this case delivers benefits to Uber's competitors such as black cab drivers (who generally do not charge VAT) and Addison Lee (which sometimes does and sometimes doesn't). However, that argument seems to me rather difficult because this case is directly concerned with HMRC's power to raise protective assessments in relation to historical unpaid VAT on taxi journeys passengers have *already* taken with Uber – and so it should not have any direct impact on Uber's ability to compete in the market now. Uber itself is aware of the risk that it may be liable to pay VAT both historically and going forward – such is mentioned in its flotation document filed with the Securities and Exchange Commission on 11 April 2019. In any event, this case is not brought with the involvement of any of Uber's competitors and, for the reasons I have stated, I do not expect them to be significant funders of it.

(c) GLP's assets, liabilities, income and expenditure

19. Our income comes from one off donations, crowdfunding and ongoing subscriptions.

20. As to one off donations, GLP has received £25,000 funding from The Persula Foundation to support its work in the precariat. The terms of this funding would not include funding a claim of this type. GLP has a commitment from Trust for London of £90,000 over two years to fund the salary of a Director of Engagement. As to other 'large' donors, a private charitable trust has over time made several donations of £5,000 to GLP. An individual donated from his personal funds £10,000 to start GLP. GLP also received funds from the Joseph Rowntree Reform Trust to develop a 'business case'. These funds have already been spent, but again could not

be used to fund litigation. GLP received £5,000 from Lush to upgrade its website. And there is an individual who offered GLP a partial indemnity of adverse costs in the Electoral Commission case; that individual has indicated that if the Electoral Commission's appeal (to be heard in July) fails they are likely to donate the £20,000 they paid on account of that indemnity to GLP.

21. Excluding donations hypothecated to other uses, and monies crowdfunded to cover the costs of ongoing litigation (and which cannot be used to fund this litigation), I would estimate GLP has received income of roughly £80,000 over the last 12 months from subscriptions and surpluses on litigation that has ended. These monies are used to fund various ongoing costs including one individual working three days a week; we are also in the final stages of recruiting a part time Chief Operating Officer. And to fund deficits in other crowdfunded litigation.
22. Our reserves are difficult to estimate due to a substantial contingent liability to costs arising from an appeal against the decision in the Uber case, a more modest anticipated surplus arising from the *Wightman* litigation, and costs from likely further litigation against the Electoral Commission we have promised to pursue if necessary. My best guess (subject to a very wide variance) is that, when these matters are resolved it will still hold a surplus of, perhaps, £80,000. But I have been trying to build up reserves to pay for staff – the lack of infrastructure around me places demands on me personally which I cannot sustain and, unless I am able to do so in the near term, GLP will close.
23. I do not have information on members' or donors' individual financial resources as they are not asked to provide this information and so I cannot speak to their ability to provide financial support to these proceedings. What I can say however is that, to my knowledge, generally members are private

individuals who are choosing to subscribe or donate on the basis that they agree with the objectives of the litigation, much as people choose to donate to charitable causes they believe in, and would be unlikely to view themselves as having any further commitment to paying for these proceedings beyond what they have decided they wish to contribute.

(d) The amount of support likely to be provided and the likely cost of the proceedings

24. I have not yet launched a crowdfunding exercise for these proceedings and I should explain why. I previously raised approximately £120,000 net of costs to bring proceedings against Uber to establish whether it was liable to VAT. However, our attempt to obtain a protective costs order in non-judicial review proceedings was rejected in the Uber case and I was ordered to pay approximately £101,000 of adverse costs. Although we have appealed against that decision the fact that I have almost exhausted the funds I raised, and made little progress makes crowdfunding very difficult.

25. In the Uber case I gave sworn evidence that any further crowdfunding exercise would be difficult and this evidence was accepted by the Judge who found at paragraph 85:

“I also accept that Mr Maugham's doubts that they will make any further contributions are both realistic and genuinely held, and that his hesitation about asking them for more for the reasons that I have already explained is readily understandable.”

26. These views have been largely born out by a crowdfunding exercise I launched to help fund the costs of the appeal (which can be seen here <https://www.crowdjustice.com/case/no-free-ride-for-bad-money/>) but which has raised only £6,510 from 217 donors.

27. I have negotiated arrangements with my own Counsel team pursuant to which they will be paid Treasury Counsel rates if we succeed (£180 per hour for leading Counsel and £100 per hour for Junior Counsel) and nothing if we fail. Irwin Mitchell have also discounted their fees which are estimated at £20,000. Overall our fees might be around the £80,000 mark if we succeed. As to HMRC's fees, I would expect these to be rather higher, perhaps £100,000.
28. However, the present case will not be able to proceed without a costs capping order. GLP would be potentially exposed to uncapped adverse costs and it lacks the resources to bear them. GLP also needs to be a claimant in multiple pieces of litigation which means it cannot accept existential risk in any single case. To that end the Board has agreed it should not be exposed to costs risk of more than £20,000 in any one case.
29. My intention is to start a crowdfunding exercise if and when the Court give permission to bring judicial review proceedings. That, I believe, would be a more propitious time to start one given the background set out above and, although the matter is basically unknowable, I am optimistic that I might be able to raise around £20,000. I feel a personal obligation to deliver for the people who funded the case against Uber and so I am happy to advise the Board that we should risk the maximum £20,000 of our reserves.
30. Although (as I have already stated) I personally contribute significant amounts of time and energy to GLP (and, indeed, I often personally contribute to the crowdfunding), I am not in a financial position to provide an indemnity to protect against an adverse costs order. So my best guess is that, should we lose, we are likely to have available around £40,000 to meet adverse costs and paying Irwin Mitchell. We also have to have regard to a situation where we succeed; I need to have monies available to meet my obligations to Counsel and Irwin Mitchell and GLP needs to

generate something of a surplus from the cases it wins in order to fund the deficits on the cases it loses.

31. HMRC's resources substantially exceed ours and, as will be seen below, the Administrative Court in England and the Court of Session in Scotland has recognised this with the grant of asymmetric costs orders. I would respectfully suggest that, as with the Electoral Commission case (referred to in section (e) below) the Court directs that our costs exposure be capped at £20,000 and HMRC's at £40,000.

32. I do not know whether the Interested Party will actively engage with the litigation but it seems likely that it will do so. The Interested Party has very substantial resources. As noted above, its costs in resisting an application for a Protective Costs Order in other proceedings exceeded £100,000. I understand that an interested party would not ordinarily be able to recover its costs in responding to a claim for judicial review where permission is granted but, for the avoidance of doubt, GLP would need costs protection to apply to the costs of the interested party as well as the costs of HMRC. I would, respectfully, suggest that the court direct, as between the Claimant and the Interested Party, that each side bear its own costs.

(e) GLP's other experience of protective costs orders

33. In other litigation GLP has come to benefit from three protective costs orders:

(1) a protective costs order was made by Mr Justice Ouseley in the Electoral Commission case. The order is asymmetric – in the sense that it caps the Claimant's liability to £20,000 and the Defendant's liability to £40,000 – recognising the differing resources of the parties. I exhibit to this statement at "JM1" a copy of the Order;

(2) a protective expenses order was made by Lord Drummond Young in the Inner House of the Court of Session in the *Wightman* case which established the unilateral revocability of Article 50. I was one of the petitioners in that case – the others are all MPs, MEPs or MSPs and I gave a personal indemnity in the case against all costs liability – both our own legal costs and any adverse legal costs – to the other petitioners in order to secure that they were able to be parties to the litigation. Again the order was asymmetric recognising the different resources available to the parties. Initially it capped the Petitioners' liability at £5,000 and the Defendant's liability at £30,000 but was later extended following the reference to the Court of Justice of the European Union.

(3) the third was agreed by the Government – without prejudice save as to costs – in judicial review proceedings brought by GLP and Molly Scott Cato MEP. This was the first in time and was reciprocal in the sum of £30,000.

As with this case, in each of those cases it would simply not be possible for the case to have proceeded in the absence of a protective costs order. Aside from the very particular context of the Uber case neither GLP nor I have ever been refused a protective costs order.

(f) the effect of not granting a costs capping order

34. There is not much more I can say about the effect of a failure to grant a costs capping order: for the reasons I have set out above the litigation would not be able to proceed.

35. GLP does not stand to gain financially, or indeed in any private respect, from the relief sought in these proceedings. It pursues these proceedings solely in the public interest.

Conclusion

36. Absent a costs capping order being granted, GLP would not be able to continue with the litigation and the claim would be withdrawn.

<p>Statement of Truth:</p> <p>I believe that the facts stated in this Witness Statement are true.</p> <p>Signed:</p> <p>(Jolyon Maugham QC)</p> <p>Dated:</p>
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IN THE HIGH COURT OF JUSTICE

Case No.

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN

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

Claimant

-and-

COMMISSIONERS OF HER MAJESTY'S REVENUE AND CUSTOMS ("HMRC")

Defendant

UBER LONDON LIMITED

Interested Party

EXHIBIT "JM1"



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO Ref:

CO/4908/2017

In the matter of an application for Judicial Review

The Queen on the application of

THE GOOD LAW PROJECT

Claimant

versus

ELECTORAL COMMISSION

Defendant

and

VOTE LEAVE LIMITED
MR DARREN GRIMES

Interested Parties

Upon the Claimant's application for a costs capping order, and considering the application, the responses of the Defendant and Interested Party and the Claimant's reply.

Following consideration of the documents lodged by the parties

Order by the Honourable Mr Justice Ouseley

1. The Claimant's liability in respect of the Defendant's costs shall be capped at £20,000
2. The Defendant's liability in respect of the Claimant's costs of these proceedings shall be capped at £40,000.
3. The Claimant's and Interested Party's liabilities to each other in respect of their costs of these proceedings shall be capped at nil.
4. See observation 6.

Observations

1. The Divisional Court's permission judgment is adequate demonstration of the importance of the issues, and the advantages of its resolution in these proceedings. That does not appear to have been one of the issues it left for consideration. I have considered the other issues in the light of the evidence and submissions.
2. The Interested Party's submissions about costs in election cases are not without interest but as the Defendant has not taken such a point and costs for or against an Interested Party are unusual, such potential satellite litigation which is not an obvious winner, does not persuade me to refuse to make a costs capping order at all.
3. Regular crowd-funded public law litigation, brought by one particular Claimant for which a costs capping order is always sought, may require some closer examination for costs capping order purposes, but no objection is taken by the Defendant, which is the body substantially affected, and it was not part of the Divisional Court points.
4. I have increased the Claimant's cap by £5,000 to £20,000. The crowd-funding has continued to come in, over £10,000 more. I do not consider it reasonable were such a figure to lead to withdrawal, but if not enough people are interested in the litigation, so be it. The incentive to raise money should continue.
5. The £40,000 reciprocal cap is fair and as proposed.
6. The Claimant and Interested Party agreed a nil cap were a CCO to be made.
7. If guarantees are offered to the Claimant, on the basis of anonymity, the Court

could not be informed about identity if the other parties were not. If however, anonymous guarantees are available, the Claimant should inform the parties of that fact, so that their position is known; this really only affects the Claimant and Defendant. The Court may then take a view on paper on the level of cap and acceptance of anonymity, knowing that if anonymity were not permitted, the guarantee would be withdrawn.

Signed *D. E. W. Owsley*
17.5.18

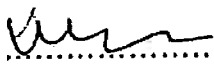
Sent to the claimant, defendant and any interested party / the claimants, defendants, and any interested party's solicitors on (date):

22 MAY 2018

Ref: P9/3553/001/HB

Conclusion

36. Absent a costs capping order being granted, GLP would not be able to continue with the litigation and the claim would be withdrawn.

Statement of Truth:
I believe that the facts stated in this Witness Statement are true.
Signed: 
(Jolyon Maugham QC)
Dated: 23.5.19