Cabbies must disclose pre-litigation communications with funders, High Court rules

By Alice Nash

Uber has won the right to inspect documents passing between the claimants' solicitors and a litigation funder in the latest skirmish in the ongoing litigation between traditional London cabbies and the well-known ride-hailing app. The extempore decision in ***White v Uber London Ltd*** (Birt J, 12 June 2026) highlights that those contemplating legal proceedings must exercise caution before sharing information with third parties, and raises questions about the potential scope of disclosure in a legal landscape where litigation funding is increasingly important.

Facts

A group of London cab drivers brought proceedings against Uber alleging that it had caused them loss by unlawful means conspiracy between mid-2012 and March 2018. The claim was not brought until mid-2024; the Claimants pleaded reliance on s.32 of the Limitation Act 1980 on the basis that they could not reasonably have discovered the alleged wrongdoing until sometime after June 2018 (when magistrates reinstated Uber's licence, but found that TFL's initial decision not to renew it had been justified by the company's conduct).

The Court ordered that limitation be tried as a preliminary issue. Uber sought disclosure of documents passing between the Claimants' solicitors and a litigation funder, H, during a period between late 2017 and October 2018. It appears that the Claimants did not instruct the solicitors until October 2018, so the correspondence sought was that passing between the solicitors and the funder for the purpose of the funder's decision whether to fund a potential claim.

The Claimants resisted disclosure on two main grounds: relevance and privilege.

The judge's decision

Birt J held that the documents were plainly relevant to the issue of constructive knowledge (i.e. what the claimants might reasonably have discovered).

It was apparently conceded that some documents would be covered by legal advice privilege, but as the funder was not the solicitors' client, the claim to privilege rested chiefly on litigation privilege.

The judge accepted that litigation was in contemplation at the time, and that it could, in principle, be claimed by a third party, but would only apply if the communications had been made for the sole or dominant purpose of conducting the litigation. Adopting a narrow reading of this requirement (which derives from *Three Rivers DC v Bank of England* (No. 6)[1]), the judge held that the funders' purpose in receiving the

[1] [2004] UKHL 48

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information was not to conduct the litigation (which would include deciding whether or not to bring it) but for the purpose of deciding whether to fund it. The dominant purpose test was therefore not satisfied.

Discussion

Recently, Picken J has handed down two decisions in *Aabar Holdings Sárl. & Ors v Glencore Plc* extending the circumstances in which privilege can be claimed: in the first, he held that there was no so-called Shareholder Rule preventing a company from asserting privilege against its own shareholders, and in the second he held that legal advice privilege extends to internal communications between members of the client group.[2] Alas, the High Court giveth with one hand, and taketh away with the other, and this judgment suggests that it cannot be safely assumed that communications with funders – albeit they may be relevant to the decision whether to proceed at all – will be privileged. On the other hand, the decision is good news for defendants looking to investigate issues of knowledge for limitation purposes.

A note of caution: as this was an extempore judgment, outsiders are reliant on summaries of the decision (in this case, on Westlaw) which do not tend to rehearse the arguments in such depth as a written judgment. Thus it is unclear why the judge applied the case of *Al-Sadeq v Dechert*[3] for the proposition that litigation privilege could be claimed by a third party, but applied a narrow construction of the "dominant purpose" test that was rejected in that case (see paras 195-197 of *Al-Sadeq*). It is also, of course, only a single first instance decision.

Nonetheless, it is a decision of which solicitors and litigation funders involved in group actions, in particular, should be aware. That is a scenario in which it is common for funders to be sought before all the claimants are identified, which appears to have given rise to the "privilege gap" in this case. Indeed, anyone proposing to bring proceedings with the help of litigation funding would be well advised to give careful thought to potential disclosure issues at an early stage before deciding how and when to share information.

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[2] Citations respectively [2024] EWHC 3046 (Comm) and [2026] EWHC 877 (Comm)
[3] [2024] EWCA Civ 28