



Neutral Citation: [2025] UKFTT 00302 (TC)

Case Number: TC09452

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

On papers

Appeal reference: TC/2023/01186

Procedure — application by third party for disclosure of documents – application granted in part

Decided on: 28 February 2025

Judgment date: 5 March 2025

Before

TRIBUNAL JUDGE SINFIELD

Between

BOLT SERVICES UK LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

and

TRANSOPCO UK LIMITED

Third Party Applicant

Application dealt with on papers in chambers, each party having made written submissions

DECISION

INTRODUCTION

1. This decision concerns an application originally made by Transopco UK Limited ('Transopco') on 21 February 2024 and re-sent to the Tribunal on 11 September 2024. The application sought disclosure by provision of copies of documents relating to the appeal by Bolt Services UK Limited ('Bolt') under reference TC/2023/01186. The appeal was allowed in a decision released by the First-tier Tribunal ('the FTT') on 15 December 2023 with neutral citation [2023] UKFTT (TC). On 19 January 2024, the FTT granted the Respondents ('HMRC') permission to appeal to the Upper Tribunal. The appeal was heard by the Upper Tribunal on 26 and 27 November 2024 and a decision is awaited.

2. The documents sought by Transopco were as follows:

- (1) Bolt's Grounds of Appeal;
- (2) HMRC's Statement of Case;
- (3) any Reply filed by Bolt;
- (4) Bolt's application for expedition of its appeal;
- (5) any response by HMRC in relation to Bolt's expedition application;
- (6) the FTT's decision granting expedition;
- (7) the witness statement and exhibits of Mr Joshua Ryan;
- (8) the Statement of Agreed Facts produced by HMRC and Bolt;
- (9) skeleton arguments of Bolt and HMRC;
- (10) transcripts of the FTT hearing (which took place on 19-21 September 2023);
- (11) HMRC's application to the FTT for permission to appeal served on 15 January 2024;
- (12) any response by Bolt to the Respondents' application for permission to appeal;
- (13) the FTT's decision granting permission to appeal dated 19 January 2024; and
- (14) the hearing bundle for the September 2023 hearing.

3. Transopco, operating under the name 'FreeNow', supplies (as principal) journeys in private hire vehicles ('PHVs') to passengers. Transopco, like Bolt, buys in ride services from PHV drivers for re-supply to passengers. Transopco contends that, at a high level of generality, both appeals give rise to issues of law that are essentially the same but there are some aspects of Transopco's case that did not arise in Bolt's appeal or were dealt with only briefly by the FTT. In summary, Transopco submits that the purpose of the application was to enable it "to exhaustively identify the differences between the two cases".

4. On 4 October, the Tribunal wrote to the representatives of Bolt and HMRC, attaching Transopco's application and inviting them to make any representations in response. Both parties provided their representations on 18 October. HMRC adopted a neutral position in relation to Transopco's application while Bolt objected to the application on the grounds set out and discussed below. Before dealing with the application and objections to it, I set out the case law on the position at common law in relation to applications by non-parties for access to documents in an appeal where, as in this case, there are no applicable provisions in procedural rules of the FTT (the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009).

CASE LAW

5. In *Cape Intermediate Holdings Ltd v Dring (for and on behalf of Asbestos Victims Support Groups Forum UK)* [2019] UKSC 38, [2020] AC 629 (*Dring*), the Supreme Court confirmed that the principle of open justice applies to all courts and tribunals and that all courts and tribunals (including the FTT) “have an inherent jurisdiction to determine what that principle requires in terms of access to documents or other information placed before the court or tribunal”. The Supreme Court also confirmed in *Cape* that the key question is “how that jurisdiction should be exercised in the particular case”.

6. In *Moss v The Upper Tribunal* [2024] EWCA Civ 1414 (*Moss*), Coulson LJ distilled the applicable principles derived from *Dring* and the other leading case in this area, *R v Guardian News and Media Ltd v City of Westminster Magistrates Court* [2012] EWCA Civ 420, [2013] QB 618 (*GNM*), at [26] – [30]:

“26. A non-party does not have the right to see every document referred to in every case. Lady Hale was quite explicit about that at [45] of *Dring*. Therefore, to the extent that it is said that there is a ‘default position’ to that effect, it is wrong. It was not what the Supreme Court said in *Dring*, and to suggest otherwise misunderstands what Toulson LJ himself said at [85] of *GNM*, and fails to give proper weight to the full paragraph. To take just one example, if there was a ‘default position’ that every document placed before a judge and referred to in the course of proceedings could be provided to any non-party who asked for it, whoever they were and for whatever reason, there would have been no need for Toulson LJ to go on, in the same paragraph, to identify that ‘where access is sought for proper journalistic purpose, the case for allowing it will be particularly strong’.

27. The first step therefore is for the person seeking access ‘to explain why he seeks it and how granting him access will advance the open justice principle. In this respect it may well be that the media are better placed than others to demonstrate a good reason for seeking access. But there are others who may be able to show a legitimate interest in doing so’ (as per Lady Hale at [45] of *Dring*). The first step in the process, therefore, is for the non-party to show a good reason for seeking disclosure, and that test needs to be satisfied in every case. I agree with Mr Wills that it is a low threshold, at least where what is being sought are copies of skeleton arguments or written submissions which are central to an understanding of the case, and that in many or most cases it will be easily cleared. But it is a threshold and it needs to be surmounted.

28. There was some debate about what Lady Hale meant by explaining ‘how granting him access will advance the open justice principle’. In my view, that simply means that the non-party must explain how access will allow him or her to follow the case and understand the reasons why the judge decided the case in a particular way.

29. If there is no good reason for granting disclosure, that is the end of the matter, and the application must fail. No balancing exercise is required. But if there is a good reason, it is then necessary to consider any countervailing factors. Those will most obviously include the risk of any harm or prejudice that may be caused by the disclosure of the documents to a non-party. In addition, there is what Lady Hale describes at [47] of *Dring* as ‘the practicalities and the proportionality of granting the request’. As she explained, an application made during the trial when the material is readily available is one thing; an application made thereafter is much less likely to succeed because it may not be practicable to provide the material and, even if it was, ‘the burdens placed on the parties on identifying and retrieving the

material may be out of all proportion of the benefits to the open justice principle and the burden placed upon the trial judge in deciding what disclosure should be made may have become much harder, or time-consuming, to discharge.’

30. The point was made during submissions that, if read literally, the last sentence of [47] of *Dring* might be taken as requiring the non-party to demonstrate that there were no countervailing factors, and to show that granting the request would not be impracticable or disproportionate. In my view, it is plain that that was not what Lady Hale meant. The last sentence of [47] is a distillation of the factors which apply in any application for disclosure to non-parties. She did not intend to suggest that the non-party should address, for example, issues relating to the risk of harm: how could a non-party know that there might be a risk of harm arising from the disclosure of a document that he or she has not even seen? The sentence is a summary, and nothing more than that. Countervailing factors and impracticabilities or lack of proportionality will be matters which, at least in the first instance, one would expect an objecting party to raise: see *Goodley v The HUT Group and Others* [2021] EWHC 1193 (Comm) at [44].”

DISCUSSION

7. In summary, it follows from *Moss* that the FTT should approach consideration of an application by a third party for access to documents by first considering why access is sought and whether disclosure will advance the open justice principle. It is for the person making the application to show a good reason for seeking access. There is no presumption in favour of disclosure (contrary to what I said in *Aria Technology Ltd v HMRC* [2018] UKUT 111 (TCC) at [25]) and access needs to be justified in every case. That may be done by the third party explaining how it will allow them to follow the case and/or understand the reasons why the tribunal decided the case in a particular way. As Coulson LJ observed in *Moss*, that is a low threshold and in many or most cases it will easily be cleared, particularly where what is being sought are copies of skeleton arguments or written submissions which are central to an understanding of the case.

8. If the person making the application cannot show any good reason why the documents should be disclosed then the application must be refused and that is the end of the matter. If there is a good reason, the tribunal must consider whether there are any countervailing factors such as a risk of any harm or prejudice that may be caused by the disclosure and the practicalities and proportionality of granting the request.

9. In relation to the application for the documents at (1), (2), (3), (10), (11), (12) and (13), Transopco submits that:

- (1) all cast light on how the various issues were pleaded and argued before the FTT;
- (2) provide helpful context for the FTT’s relatively briefly expressed decision;
- (3) enable the Applicant to understand the basis of HMRC’s appeal (which will in turn require an understanding of how the case was argued by both sides); and
- (4) the extent to which the appeal is aligned with its case.

10. In relation to the documents at (4), (5) and (6), Transopco contends that Bolt’s application for expedition of its appeal, HMRC’s response to that application and the FTT’s decision granting expedition will enable Transopco to understand whether there are material differences between its own application for expedition and Bolt’s.

11. As to the documents at (7), (8), (9) and (14), Transopco contends that they will enable it to put the parties' submissions into their factual context and understand fully the submissions made. Transopco accepts that some of the documents sought may have to be redacted.

12. I now consider Transopco's application and Bolt's objections in relation to the various categories of documents sought. For reasons that will become obvious, I start with the documents requested at (10), namely the transcripts of the FTT hearing.

Documents (10) transcripts

13. Bolt does not object to disclosure of the transcripts and agrees to provide them to Transopco if it agrees to pay Bolt 20% plus VAT of the costs which it incurred in relation to the transcripts. I consider that as Bolt's appeal was heard in public, with no application for any part of it to be heard in private, there can be no principled objection to disclosing the transcripts of that hearing. I am satisfied that Transopco has a good reason for obtaining access to the transcripts, namely, to understand the way the case was put more fully and why the tribunal decided the case as it did. I also regard it as entirely reasonable that Transopco should be required to reimburse part of the costs incurred by Bolt in procuring the transcripts. To direct that Bolt provide the transcripts free of charge would not be proportionate in my view. Accordingly, I direct that Bolt provide the transcripts of the hearing in September 2023 to Transopco within 14 days of payment by it of 20% (or such other percentage as the parties may agree) of the costs incurred by Bolt in relation to the transcripts plus VAT (if applicable).

Documents (1), (2) and (3) pleadings

14. Bolt objects to disclosure of its Grounds of Appeal, HMRC's Statement of Case and the Reply filed by Bolt on the basis that the FTT issued a well-reasoned decision that set out clearly the relevant facts and an understanding of how that decision was reached. Bolt does not consider that access to the pleadings is necessary to advance the principle of open justice. It also makes the point that all the relevant information about the parties' submissions can be obtained by reading the transcripts. Bolt does not suggest that providing copies of the pleadings would be disproportionate or unduly difficult.

15. I take the view that, as with skeleton arguments and written submissions, the threshold to establish that there is a good reason why the pleadings should be disclosed is low. The pleadings are (or should be) central to an understanding of the case. They are invariably read by the panel in advance and it is often the case that passages in them are taken as read and referred to only briefly, if at all, in the hearing. Accordingly, the transcript will often not reveal the parties' pleadings. It will, therefore, usually be necessary for any third party to have read the pleadings in order to understand submissions or comments in the transcript. There is no suggestion in *Moss* or the other authorities that the threshold for obtaining access to pleadings is higher where transcripts are provided because the third party may be able to work out what the parties have pleaded by analysing the transcripts. For those reasons, I do not accept Bolt's submission that the transcripts make provision of the Grounds of Appeal, Statement of Case and Reply otiose. Accordingly, I direct that Bolt provide Transopco with copies of the Grounds of Appeal, HMRC's Statement of Case and Bolt's Reply within 21 days of the date of release of this decision and subject to any extension granted pursuant to the next paragraph.

16. In the event that I direct (as I have) that the pleadings must be disclosed, Bolt asks to be allowed to redact the documents as far as necessary to preserve confidential and commercially sensitive information and for an order that Transopco pay the costs of such an exercise. Although, on its face, Bolt's request is a reasonable one, it has not provided any examples of information in the pleadings that might be regarded as confidential or

commercially sensitive information or any indication of what costs might be incurred. I, therefore, direct that Bolt provide the FTT with a list of those paragraphs which are claimed to contain such information within seven days of the date of release of this decision. No further explanation is required so it is hoped that this will be a quick and inexpensive exercise. Bolt need not copy the information to Transopco or HMRC and in the unlikely event that more time is needed, Bolt may apply for an extension.

Documents (4), (5) and (6) expedition application and associated documents

17. Bolt resists Transopco's application for disclosure of Bolt's application for expedition of its appeal, the response by HMRC and the FTT's decision granting expedition. Bolt submits that disclosure is not necessary and would risk significant harm because the application and related documents contain confidential and commercially sensitive information. The FTT recognised this in its Directions of 19 April 2023 which included a direction prohibiting the disclosure or publication of Bolt's expedition application and of the witness statement of Joshua Ryan dated 20 March 2023 (with exhibits) appended to that application.

18. Bolt also contends that Transopco has not shown any good reason why it should obtain access to the documents. Transopco says that disclosure of these documents will enable it to understand better whether there are material differences between its own application for expedition and Bolt's which will allow it to refine its own application. Bolt submits that whether or not Transopco's request for expedition is granted will depend on its own facts and knowledge of the contents of Bolt's application will not assist.

19. I accept Bolt's submissions in relation to these documents. In my view, Transopco has not shown that it has a good reason for seeking access to them. The expedition application and associated documents are not central to an understanding of the case. As Bolt observes, applications for expedition are fact-sensitive and turn on the circumstances of the particular case. In this case, Bolt relied on confidential and commercially sensitive information in support of its application as was recognised by the FTT in its Directions of 19 April 2023. Such information would be of no relevance or use in relation to Transopco's application for expedition. Accordingly, I refuse Transopco's application for disclosure of the expedition applications and related documents.

Documents (7) witness statement and exhibits of Joshua Ryan

20. Transopco applies for disclosure of the witness statement of Joshua Ryan dated 9 June 2023 (and documents exhibited to it) which was produced for the hearing.

21. Bolt objects to disclosure of the witness statement on the ground that access to the witness statement is not necessary to advance the open justice principle. I disagree. In my view, it is clear that disclosure of the witness statement would further the principle of open justice and Bolt does not suggest that it (as opposed to the exhibits) contains any confidential and commercially sensitive information. The witness statement was referred to in cross-examination of Mr Ryan and taken into account in the decision even if not specifically quoted or mentioned. I consider that disclosing the witness statement of Mr Ryan is necessary to allow Transopco to understand the basis of the FTT's findings of fact and why it decided the case as it did. Accordingly, I direct that Bolt provide Transopco with a copy of the witness statement of Joshua Ryan dated 9 June 2023 within 21 days of the date of release of this decision.

22. Bolt objects to disclosure of the exhibits to Mr Ryan's witness statement on the grounds that they are voluminous, include confidential and commercially sensitive information relating to Bolt's business which was not referred to in open court. Bolt also makes the point that if the FTT were to order disclosure of the exhibits, extensive redactions would be

required which would be a time-consuming and onerous exercise. I accept Bolt's submissions in relation to the confidential and commercially sensitive nature of many of the exhibits. I recall that the exhibits were voluminous. I consider that to direct disclosure, with appropriate redactions, in this case that would impose a disproportionate administrative burden on Bolt. Accordingly, I refuse Transopco's application for disclosure of the exhibits. If, having read Mr Ryan's witness statement, Transopco considers that a more limited disclosure of specific exhibits would advance the principle of open justice, it has liberty to make a further application.

Documents (8), and (9) statement of agreed facts and skeleton arguments

23. Bolt objects to disclosure of the statement of agreed facts and the parties' skeleton arguments on the basis that the FTT's decision sets out the relevant facts and how the conclusion was reached. Bolt contends that access to these documents will not advance the principle of open justice. I disagree, essentially for the same reasons as I have given above in relation to disclosure of Mr Ryan's witness statement.

24. I note that, in *Moss* at [27], Coulson LJ specifically referred to there being a low threshold for establishing that the third party has a good reason for seeking disclosure which will be easily cleared in many or most cases where a third party seeks copies of skeleton arguments or written submissions which are central to an understanding of the case. It seems to me that the threshold has clearly been met in this case. At the hearing, both parties referred to the skeleton arguments which I had read before the hearing took place. The skeletons were not read out or quoted from extensively during the hearing because it was not necessary to do so. I have no doubt that a person reading the transcripts would find it much easier to understand the parties' submissions and my comments on them during the hearing if they had also read the skeletons. The statement of agreed facts and skeleton arguments are part of the background to the case and were taken into account, even if not specifically quoted or referred to, in the decision. In such circumstances, it seems to me that providing the statement of agreed facts and the skeleton arguments would further the principle of open justice in that it would enable Transopco to understand the proceedings and the decision more fully. Accordingly, I direct that Bolt provide Transopco with copies of the statement of agreed facts and the parties' skeleton arguments within 21 days of the date of release of this decision and subject to any extension granted pursuant to the next paragraph.

25. As in the case of the pleadings, Bolt asks to be allowed to redact the documents before disclosure to preserve confidential and commercially sensitive information and for an order that Transopco pay the costs of such an exercise. Again, it seems to me that this is a reasonable request but Bolt has not stated what parts of the documents it regards as confidential or commercially sensitive. I observe that there was no application by Bolt for the FTT to exclude any parts of the statement of agreed facts or skeleton arguments from the decision on grounds of confidentiality or commercial sensitivity and I am not currently satisfied that any such application would have been granted. I direct that Bolt provide the FTT with a list of those paragraphs in the statement of agreed facts and skeleton arguments which are claimed to contain such information within seven days of the date of release of this decision. No further explanation is required so it is hoped that this will be a quick and inexpensive exercise. Bolt need not copy the information to Transopco or HMRC and in the unlikely event that more time is needed, Bolt may apply for an extension.

Documents (11), (12) and (13) documents associated with permission to appeal

26. Transopco applies for disclosure of HMRC's application to the FTT for permission to appeal, any response by Bolt and the FTT's decision granting permission to appeal. Bolt objected to the application on the ground that the disclosure related to an appeal (in the Upper

Tribunal) which had yet to be heard. As noted above, the Upper Tribunal heard the appeal in November 2024 but the decision is yet to be issued. Bolt relied on *Cider of Sweden Ltd v HMRC* [2022] UKFTT 76 (TC) which concerned an application by a third party for copies of pleadings at early stage in the proceedings, before any judicial consideration of the substantive issues (see [53] – [54]).

27. I am not prepared to grant Transopco’s application. It seems to me that disclosure of the documents relating to the application for and grant of permission to appeal in this case will not advance the principle of open justice. An application for permission to appeal and any reply will not allow the third party to understand the reasons why the FTT decided the appeal as it did. The application and reply are merely the parties’ views as to the correctness or otherwise of the decision. In so far as permission is granted (as it was in this case), the decision is brief and says nothing about the reasons why the FTT decided the appeal as it did. It may be that where the FTT refuses permission on all or some grounds, a permission to appeal decision may explain the substantive decision, however, that was not what happened in this case. The grounds of appeal and HMRC’s response to them will, of course, be the subject of the Upper Tribunal’s decision in due course.

Documents (14) FTT hearing bundle

28. Transopco seeks disclosure of the hearing bundle produced for the September 2023 hearing. Bolt opposes the application, in summary, because the hearing bundle:

- (1) includes documents that contain information that is confidential and commercially sensitive;
- (2) runs to over 3,100 pages and redacting it would be a time-consuming and onerous exercise that would impose a disproportionate administrative burden on Bolt; and
- (3) access to the bundle is not necessary for Transopco to understand proceedings or the reasons why the tribunal decided the case as it did.

29. I accept Bolt’s submissions. For essentially the same reasons as I have decided to refuse to direct disclosure of the exhibits to Joshua Ryan’s witness statement of 9 June 2023, I am not prepared to direct the disclosure of the hearing bundle. However, as in the case of those exhibits (which are, of course, included in the hearing bundle), Transopco may apply for disclosure of specific items in the hearing bundle if, having reviewed the transcripts, it considers that it is necessary to its understanding and would further the principle of open justice to have a copy of a particular document.

DECISION

30. For the reasons given above, I allow Transopco’s application for disclosure in part and direct as set out at the end of this decision.

31. I refuse Transopco’s application for disclosure in so far as it relates to:

- (1) Bolt’s application for expedition of its appeal;
- (2) HMRC’s the response to the application for expedition;
- (3) the FTT’s decision granting expedition; HMRC’s application to the FTT for permission to appeal;
- (4) any response by Bolt to the application for permission to appeal;
- (5) the FTT’s decision granting permission to appeal; and
- (6) the hearing bundle produced for the September 2023 hearing is refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

32. 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 the FTT 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: 05th MARCH 2025

DIRECTIONS

I direct that:

- (1) Bolt shall provide the transcripts of the hearing in September 2023 to Transopco within 14 days of payment by Transopco of 20% (or such other percentage as the parties may agree) of the costs incurred by Bolt in relation to the transcripts plus VAT (if applicable).
- (2) Bolt shall provide Transopco with copies of the following documents, in such format as shall be agreed, within 21 days of the date of release of this decision subject to any extension that may be granted by the FTT for redaction of the documents:
 - (a) the Grounds of Appeal;
 - (b) HMRC’s Statement of Case;
 - (c) Bolt’s Reply;
 - (d) the witness statement of Joshua Ryan dated 9 June 2023 (but documents exhibited thereto);
 - (e) the statement of agreed facts; and
 - (f) the parties’ skeleton arguments.
- (3) Any party may apply to the FTT at any time for these Directions to be amended, stayed or set aside.