

The Technology and Construction Court (TCC) recently handed down judgment in the case of *Lime Technology Limited v Liverpool City Council* [2025] EWHC 1654 (TCC).

In this case update, we examine what this case means for public procurement challenges, in particular confidentiality ring applications and concerns regarding the balancing of reasonable and proportionate exchange of confidential information.

Overview

In litigation proceedings, a confidentiality ring allows the parties to exchange confidential documents (such as commercially or competitively sensitive information) relating to each other, as well as third parties, where access to confidential documents is restricted to permitted named individuals only and sets out the terms of how the confidential documents are handled, with such being achieved by the establishment of a Confidentiality Ring Order (CRO).¹ It is possible to establish a CRO prior to the issue of proceedings to obtain early specific disclosure to support resolution of the dispute, with the aim of avoiding the need to issue proceedings.

There is particular sensitivity in relation to confidentiality rings on the part of third parties and the effectiveness of safeguards. Nonetheless, the use of confidentiality rings is explicitly provided for in the TCC Guide.²

Parties

Lime Technology Limited (Lime) is a provider of “micromobility services”, namely e-bikes and e-scooters in metropolitan areas including five UK cities.³

Liverpool City Council (LCC) is a metropolitan borough council and the local authority for the city of Liverpool in Merseyside.

Background

In January 2025, LCC issued an Invitation to Tender (ITT) for their E-Scooter and E-Bike Concession Contract⁴, the value of which was estimated at between £1,000,000 to £2,000,000, and would last for two years starting in June 2025.⁵

As part of their final tender, bidders were asked to submit a pricing schedule.

This was to include:

- i. Expected mobilisation and exit costs;
- ii. Proposed price for various “income items”⁶
- iii. Expected overhead costs
- iv. Income share to be received by LCC

Tenderers were given the flexibility to choose whether their pricing schedule was based on:

- i. Profit share
- ii. Revenue share
- iii. A fixed operator fee per month

Lime was one of the companies who submitted a tender to LCC’s ITT. However, they were subsequently informed by LCC that the contract had instead been awarded to Bolt Operations UK Limited (Bolt) who are their principal competitor in the UK micromobility market.⁷

Legal Challenge

Having been unsuccessful in their tender, Lime challenged LCC’s procurement decision under the Concession Contracts Regulations 2016.⁸

Lime alleged i) breaches of transparency and equal treatment duties, and ii) a failure by LCC to “evaluate and reject Bolt’s tender response as abnormally high”.⁹ They also sought specific disclosure of various categories of documents.¹⁰

Lime later provided LCC with a draft CRO where they proposed inclusion of one of their employees – thereby affording that employee access to the confidential information emanating from Bolt to be disclosed by LCC, including “Bolt’s pricing proposals and cost information”.¹¹

The employee suggested was Mr. Alessio Raccagna (senior director, Government Affairs – Southern Europe). Although this was not initially opposed by LCC, the local authority subsequently hardened its stance.

1 The circumstances whereby Confidentiality Rings are appropriate was considered in detail in the “Dieselgate” case of *Aurora Cavallari and others v Mercedes-Benz Group AG and others* [2024] EWHC 190 (KB).

2 See Appendix H: TCC Guidance Note on Procedures for Public Procurement Cases of the TCC Guide.

3 Lime presently operates in over 230 cities across 30 countries, including London, Manchester, Milton Keynes, Nottingham and Derby.

4 Concession contracts allow public entities to grant private entities the right to operate and/or construct a public work or service, with the public entity often receiving revenue generated from the operation.

5 For further, see: [E-Scooter and E-Bike Concession Contract - Contracts Finder](#)

6 This included how much it would cost to unlock an e-scooter/e-bike and the costs of renting such for a week.

7 Bolt presently operates in over 600 cities and over 100 airports globally.

8 These regulations govern the award and managing of concession contracts and are designed to guarantee transparency, fairness and competition.

9 [11].

10 For further, see [12].

11 [16].

In support of its proposal, Lime maintained that there existed a degree of separation between Mr. Raccagna's team and those engaged in the submission of tenders, and that there was limited overlap between those cities covered by Mr. Raccagna and those that Bolt provides micromobility services.¹² Moreover, the draft CRO contained "extensive undertakings," namely that Mr Raccagna was not presently "actively participating" in UK procurement processes and that he would not do so in the future (including in Liverpool) without the consent of Bolt for a period of 12 months.¹³

Bolt, maybe unsurprisingly, raised objections to the inclusion of Mr. Raccagna within the CRO as a means of protecting their "commercially sensitive information"¹⁴ They argued that his inclusion was not appropriate given (i) the two companies were "principal competitor[s]" in the UK market, (ii) Mr Raccagna's status as a "senior executive" of Lime, and (iii) the "detrimental" damage that would be caused by the CRO being compromised.¹⁵

LCC's stance was that the CRO should be "external advisors-only" and that a current employee (such as Mr Raccagna) should therefore be excluded (at least initially).¹⁶

Authorities

In considering the authorities in this field, Mr. Roger Ter Haar KC (sitting as a deputy High Court judge), formulated 10 "points of importance"¹⁷:

1. The court is required to "balance the interests of the receiving party in having the fullest possible access to relevant documents against the interests of the disclosing party, or third parties, in the preservation of their confidential commercial and technical information."
2. It will be "exceptionally rare" for a receiving party's officer or employee to obtain "no access at all to documents of importance at trial."
3. "There is no universal form of order suitable for use in every case, or even at every stage of the same case."
4. It is "exceptional" to limit disclosure to "external eyes only at any stage."
5. Where "an external eyes only tier is created for initial disclosure ... the onus remains on the disclosing party throughout to justify that designation for the documents so designated."
6. The level of protection should vary depending on the "value and potential for misuse" of information.
7. It is relevant to consider the "[d]ifficulties of policing misuse."
8. It is also relevant to consider "[t]he extent to which a party may be expected to contribute to the case based on a document"
9. A "material contribution" is "[t]he role which the documents will play in the action"
10. The handling of the confidential information depends on "[t]he structure and organisation of the receiving party"

Ruling

In his judgment, Mr. Roger Ter Haar KC concluded that:

- Bolt had "legitimate commercial concerns as to the risks of highly sensitive information being leaked and/or misused"¹⁸ and that Lime had a "legitimate interest in someone from within its organisation having access to the pricing information ..." ¹⁹
- The matter required the "assessment and formulation of any amendments to the pleadings" from "someone experienced in the commercial activity" concerned rather than external lawyers.²⁰
- Initial disclosure requires a challenger (in this case Lime) to take an informed decision, regarding "whether to commit time and money to the proceedings."²¹
- In procurement challenges, "the inclusion of a client representative in a confidentiality ring is the norm, not the exception."²²
- LCC's position was rejected in relation to "a staged process" of establishing "tiered" confidentiality rings.²³
- It would be inappropriate to have "an independent expert within the CRO rather than a client representative";²⁴ and that "Lime is entitled to form its own view based upon its own knowledge and experience."²⁵
- Finally, conditional upon "the proffered undertakings" being provided, it was acceptable to include Mr. Raccagna within the CRO.²⁶

12 [18].

13 [19].

14 [21].

15 *Ibid.*

16 [23].

17 [39].

18 [35].

19 [36].

20 [37]. See also [39].

21 [38].

22 [40].

23 [41].

24 [42].

25 *Ibid.*

26 [43].

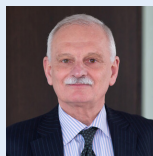
Key Takeaways

In permitting the CRO in the form submitted by Lime, the court recognised the right of an unsuccessful tenderer to access pricing information within a confidentiality ring in order to allow a claimant to assess the validity of a potential challenge (rather than having to rely on external advisors).

Moreover, while it is perfectly reasonable for companies to have legitimate concerns regarding commercially sensitive information being leaked, the case also illustrates that such worries are not, in themselves, sufficient to justify the exclusion of experienced internal personnel from CROs. On the contrary, it is more usual and appropriate for client representatives to be included within the CRO, because it is those representatives that have the technical and expert knowledge to “review, discuss and act upon the confidential information”²⁷

Although hardly revolutionary, the court thereby acknowledged both the entitlement of failed tenderers to receive material and the importance of client involvement in procurement challenges from an early stage, including where that involvement requires access to competitively sensitive information.

Contacts



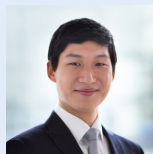
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²⁷ [27].