



MORE LESSONS ON PRIVILEGE

MARCH 2019

Since the ruling in *SFO v ENRC*, three decisions in cases brought before the English courts towards the end of 2018 (and a further judgment in one of those cases this year), all of which concerned internal communications within an organisation, have provided further guidance on some important issues for businesses: the scope of legal advice privilege where an in-house lawyer is involved and where emails are sent to multiple addressees; and, the types of documents and communications that may not be covered by litigation privilege.

The scope of legal advice privilege

In *Glaxo Wellcome UK Ltd (t/a Allen & Hanburys) & anr v Sandoz Ltd & Ors* [2018] EWHC, the English High Court considered the availability of legal advice privilege in circumstances where an in-house lawyer was both giving legal advice to a colleague and obtaining legal advice on behalf of her employer from external lawyers. The court applied the strict approach of *Three Rivers (No 5)* and distinguished between who the "client" was for the purposes of internal advice and the advice sought from external lawyers.

Emails sent to both in-house lawyers and other employees

In another case involving in-house lawyers, *R (on the application of Jet2.com Ltd) (Jet2.com) v Civil Aviation Authority (CAA)* [2018] EWHC 3364 (Admin), and subsequently *Jet2.com v CAA* [2019] EWHC 336 (Admin), the High Court needed to consider the application of legal advice privilege where an internal email was sent to both lawyers and non-lawyers.

Commercial discussions in respect of settlement

And finally, the Court of Appeal had another opportunity to consider the scope of litigation privilege two months after its ruling in *SFO v ENRC*. In *WH Holding Ltd, West Ham United Football Club Limited (West Ham) v E20 Stadium LLP (E20)* [2018] EWCA Civ 2652 the court needed to determine whether litigation privilege extended to documents concerned with settling litigation (here emails reflecting commercial discussions as to the merits of settlement) where the documents neither sought advice or information for the purpose of conducting litigation nor revealed the nature of such advice or information.

Click [here](#) to read our detailed factsheet on privilege.

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