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Corporate privilege after *Jardine*, *Serendipity* and *Aabar*: a clearer but more disciplined landscape

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Recent decisions show a judicial trend: privilege remains protected, but only where its foundations — confidentiality, client identification and purpose — are established.

A series of recent decisions has clarified the operation of legal professional privilege in the corporate context. Taken together, *Jardine Strategic Limited v Oasis Investments II Master Fund Ltd and 80 others (No 2)* [2025] UKPC 34, *The Serendipity Centre Ltd v Tinson* [2026] EWHC 349 (Ch), and *Aabar Holdings S.à.r.l v Glencore plc* [2026] EWHC 877 (Comm) point in the same direction. The courts are reaffirming the importance of privilege, while also insisting that it must be analysed by reference to its principles, rather than assumption, status or formulaic assertion.

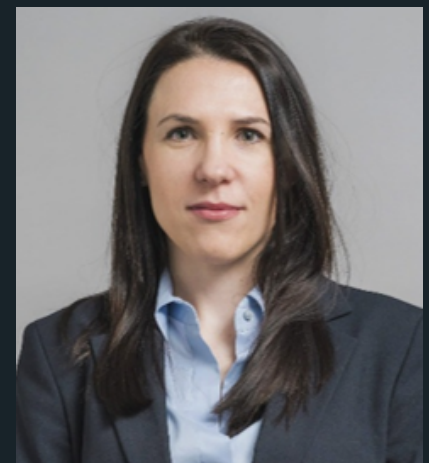
1. The end of the Shareholder Rule: status is not enough

The most significant development is *Jardine*, in which the Privy Council abolished the long-standing “Shareholder Rule” in Bermuda and, by a *Willers v Joyce* direction, stated that courts in England and Wales should also treat the rule as abandoned. Historically, the Shareholder Rule had been understood as preventing a company from asserting legal advice privilege against its shareholders, at least in respect of advice obtained before the relationship between company and shareholders became adversarial.



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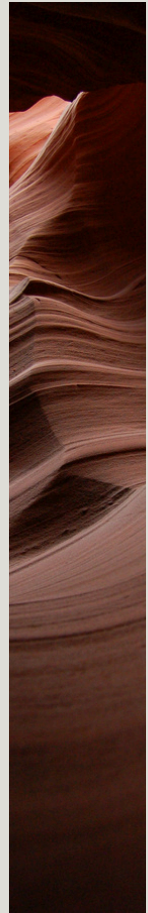
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The Privy Council rejected the rule's principal justifications. Shareholders do not have a proprietary interest in company assets merely because company funds were used to obtain legal advice. Nor is the company-shareholder relationship equivalent to joint interest privilege: shareholders are not a unified, homogeneous class, and their interests may differ from each other and from the company. The Privy Council also rejected a fact-sensitive version of the rule, because directors need certainty when seeking legal advice. If privilege depended on how a later dispute developed, the protection would be undermined at the very point when it is needed.

The Privy Council's conclusion echoed an earlier first-instance ruling by Picken J in the *Aabar* litigation (*Aabar v Glencore*... [2024] EWHC 3046 (Comm)), who had already held that the Shareholder Rule no longer existed under English law.

The practical effect is important. Companies can now resist shareholder attempts to obtain legal advice merely by relying on shareholder status. Shareholder claimants must instead use ordinary disclosure routes and confront the usual limits imposed by legal professional privilege, unless they can establish waiver, an exception such as iniquity, or an express statutory override.



2. Privilege still depends on confidentiality: the former director problem

The *Serendipity Centre v Tinson* demonstrates the other side of the same principle. The High Court held that a company could not rely on privilege to withhold legal advice from a former director (Ms Tinson) who had lawfully instructed solicitors and seen the advice when it was obtained. Although the advice remained confidential as against the rest of the world, it was not confidential as against that former director.

That conclusion does not revive the Shareholder Rule. The court made clear that Ms Tinson's shareholder status would not, by itself, defeat privilege after *Jardine*. The point was different: confidentiality is a precondition to privilege, and confidentiality must be assessed as against the person seeking inspection. A company may own the privilege, but it cannot necessarily assert confidentiality against a person who was already lawfully aware of the advice when it was created (though other case law suggests this remains fact-dependent, rather than being a general principle).

The decision is also procedurally significant. The court construed a specific disclosure order requiring the "full file" according to its actual wording and refused to imply a relevance filter. It also criticised a bare assertion of "legal professional privilege" as inadequate. Parties withholding inspection must explain the basis of privilege with enough clarity to allow the claim to be tested, without disclosing the privileged substance itself.



3. Intra-client communications: practical protection, but only for the properly defined client group

In *Aabar v Glencore*, Picken J clarified another important aspect of corporate privilege. Legal advice privilege may apply to internal documents and communications passing between members of the corporate “client group”, even where no lawyer is copied, provided the dominant purpose of the communication is to seek legal advice.

That is a helpful development for corporate clients. In practice, companies often need to formulate instructions internally before approaching external or in-house lawyers. Board members, senior executives or members of a deal or investigation team may prepare summaries, questions, draft instructions or briefing notes for the purpose of obtaining legal advice. *Aabar* recognises that those preparatory steps may themselves be privileged where they are confined to the authorised client group and satisfy the dominant purpose test.

However, the decision is not an unrestricted expansion of privilege. It does not alter the narrow definition of the corporate “client” derived from *Three Rivers (No 5)*. Communications involving employees outside the authorised client group remain vulnerable unless litigation privilege or another recognised basis applies. The protection is therefore useful, but it depends on disciplined matter management: identifying the client group, keeping communications within it, and making the legal advice purpose clear.

4. The broader trend: privilege is being clarified, not diluted

The trend across these cases is a movement away from broad, status-based or assumption-based privilege arguments and towards a more principled, evidence-based approach. The courts are asking precise questions: who is the privilege holder; who is the person seeking inspection; was the communication confidential as against that person; who was within the client group; and what was the dominant purpose of the document?

For companies, the trend is largely favourable. *Jardine* removes a historically uncertain rule that exposed legal advice to shareholder inspection. *Aabar* gives practical protection to genuine internal preparation for legal advice within the client group. Together, those cases strengthen the ability of companies to obtain and prepare for legal advice in confidence.

But the trend is not simply pro-company. *Serendipity* shows that privilege will not be allowed to operate mechanically where confidentiality is absent. It also shows that courts expect parties to comply with the actual wording of disclosure orders and to articulate privilege claims properly. A company cannot rely on the label of privilege alone; it must be able to demonstrate why the protection applies.

The result is a more disciplined privilege landscape. Privilege remains a fundamental right, but it is increasingly scrutinised by reference to its underlying requirements. Courts are willing to protect legal advice where the claim is properly grounded, but they are less willing to preserve old rules, shortcuts or vague privilege assertions that cannot be justified by principle.



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