

**Respondent**  
**H Chapman**  
**HC-1**  
**29/03/2018**

**IN THE WESTMINSTER  
MAGISTRATES COURT**

**B E T W E E N:**

**UBER LONDON LIMITED**

**Appellant**

**-and-**

**TRANSPORT FOR LONDON**

**Respondent**

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**WITNESS STATEMENT OF HELEN KAY CHAPMAN**

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I, Helen Kay Chapman, of Transport for London ("TfL"), Windsor House, Petty France, 55 Broadway, London, will say as follows:

1. I am employed by TfL as Interim Director of Licensing, Regulation and Charging, a post I have held since 1 December 2017. My responsibilities in this role include supervision of TfL's licensing and regulation of taxis and private hire vehicles, oversight of Taxi and Private Hire ("TPH") policy and management of the TPH and Road User Charging department at TfL.
2. I have worked at TfL since 2002. I joined TPH in 2009 as the Deputy Director, before becoming General Manager in 2013. Prior to working in TPH, I worked on congestion charging and traffic enforcement. My roles included spells as Interim Head of Enforcement and Head of Management Information. I am currently a Board Member of the International Association of Transport Operators.
3. The facts and matters in this witness statement are within my own knowledge, except where I indicate otherwise. In such cases, I indicate the source of my belief and understanding and I believe the facts and matters stated to be true. I

am duly authorised to make this witness statement for TfL as the Respondent in these proceedings. At various points in this statement I set out the corporate views of TfL as a whole, which accord with my own views.

4. There is now produced and shown to me a consecutively paginated bundle of documents marked "HC-1", divided into various tabs, containing the documents to which I refer in this witness statement. I refer to these documents in the format **[HC-1/x/y]** where "x" is the bundle number, "y" refers to the tab number and "z" is the page number.
5. I have read the witness statements of Mr Thomas Elvidge, Mr Fred Jones and Ms Laurel Powers-Freeling made on behalf of Uber London Limited ("**ULL**"), the Appellant. I refer to the statements in the format "**[Surname ¶x]**", where "Surname" is the name of the person making the statement and "x" is the paragraph number. I refer to the exhibits to those statements in the format **[EX1/x/y/z]**, where "EX1" refers to the exhibits to the relevant statement, "x" refers to the bundle number in the Claimant's appeal bundles, "y" refers to the tab and "z" refers to the page number.

## **INTRODUCTION AND BACKGROUND**

6. TfL was created under the Greater London Authority Act 1999 ("**the GLA Act**") in 2000. Amongst other things, it is the licensing authority for the private hire vehicle ("**PHV**") industry in London. It took over the responsibility for the Public Carriage Office from the Metropolitan Police Service. TfL also regulates and licences the taxi sector (or hackney carriages) in London. The licensing regime in respect of taxis is different from that in respect of PHVs in several important respects. Amongst other things, taxis must comply with certain stringent rules concerning their design, turning circle, etc. Taxis are equipped with a taximeter (PHVs must not be). Taxi driving licence holders must fulfil an exacting test called The Knowledge, which requires them to demonstrate detailed knowledge of the London road network (PHV drivers must pass a much less demanding topographical test). Furthermore, taxis are entitled to ply for hire: they may stand or drive on the street displaying their availability for hire and the driver may accept a booking directly in the vehicle.

7. TfL is required by the GLA Act to exercise its powers for the purpose of developing and implementing "*policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London*" and for the purpose of implementing the Mayor's transport strategy (see sections 141(1) and 154(3) [HC-1/C/2/915 and 917]). The current transport strategy is set out in the March 2018 Mayor's Transport Strategy [HC-1/B/37/717-880] and includes the following objectives:
  - (a) Ensure that London has a safe, secure, accessible, world-class taxi and private hire service with opportunity for all providers to flourish;
  - (b) Enhance London's streets and public transport network so as to enable all Londoners, including disabled and older people, to travel spontaneously and independently, making the transport system navigable and accessible to all; and
  - (c) Provide an attractive whole-journey experience that will encourage greater use of public transport, walking and cycling.
8. As a consequence, when exercising its regulatory powers, TfL is required to take into account and, where necessary, balance various interests, in particular public safety, accessibility (especially for disabled, older and younger people), efficiency and the economic interests of service users.
9. Passenger safety is TfL's top concern. Its policy statement on Private Hire Services in London (as at February 2018) (already exhibited at [EX1/D/56/924]), states that "*safety is the top priority for TfL and we closely consider an applicant's approach to safety when reaching a licensing decision for a London PHV Operators (PHV operators) licence.*" Safety is a particular focus in new or novel areas where there is little existing evidence of the extent of risk (or potential harm) that a customer may face, and TfL wishes to mitigate that risk [EX1/D/56/926-7]. As set out above, TfL also seeks to achieve an adequate quality of service for passengers and accessibility of service.

### **The PHV licensing regime and sector**

10. In part due to the factors laid out above, the PHV industry is a heavily regulated sector. The Private Hire Vehicles (London) Act 1998 ("**the 1998 Act**") [EX1/C/2] is the primary legislation in the field. It covers any vehicle seating

eight or fewer passengers that is made available for hire with a driver to carry passengers, apart from public service vehicles and taxis (section 1(1) [EX1/C/2/96]). As explained in Mr Elvidge's witness statement, and as set out above, PHVs in London are subject to a regime that is distinct from black taxis or "*hackney carriages*." [Elvidge ¶13] It is also distinct from the regime that regulates PHVs in the rest of England and Wales, which is set out in the Local Government (Miscellaneous Provisions) Act 1976 [EX1/C/1].

11. The 1998 Act establishes a three-part licensing regime in the PHV sector. It requires each of a private hire operator (defined in section 1(1)(b) [EX1/C/2/96]) as an entity or person who makes provision for the invitation or acceptance of, or who accepts, private hire bookings), a private hire driver, and a private hire vehicle to have a licence, in order lawfully to accept bookings and carry passengers on journeys in London.
12. Section 2(1) of the 1998 Act [EX1/C/2/97] provides that no person shall make provision for the invitation or acceptance of, or accept, private hire bookings unless he is the holder of a private hire vehicle operator's licence for London. A person who makes provision for the invitation or acceptance of private hire bookings, or who accepts such a booking, in contravention of section 2 of the 1998 Act is guilty of a criminal offence (section 2(2)).
13. As a result of section 4 of the 1998 Act [EX1/C/2/98], the holder of a London PHV operator's licence shall not in London accept a private hire booking other than at an operating centre specified in his licence. A London PHV operator that contravenes that provision is guilty of an offence (section 4(5) [EX1/C/2/99]). I understand that the reason why only licensed operators can accept private hire bookings, and only at specified operating centres, is that Parliament considered it important that such bookings are accepted by persons who are fit and proper to fulfil the role. A fit and proper operator will (amongst other things) pay sufficient regard to public safety, keep proper records, handle complaints appropriately and be subject to inspection and regulation.
14. TfL is empowered by sections 3 [EX1/C/2/97], 7 [EX1/C/2/101] and 13 [EX1/C/2/105] (read together with section 32(1) [EX1/C/2/120]) of the 1998 Act to issue each kind of licence and to prescribe licence conditions by way of regulations in addition to those contained in the 1998 Act.

15. The regulations that prescribe those additional licence conditions are:
- (a) for operators' licences, the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000 (SI 2000/3146) (the "**Operator's Licences Regulations**") (the Operators Licences Regulations included in the exhibits to ULL's evidence are not up-to-date. The amendment regulations are at **[HC-1/C/3/931-939]** );
  - (b) for driver's licences, the Private Hire Vehicles (London PHV Driver's Licences) Regulations 2003 ("**the 2003 Regulations**");
  - (c) for vehicle licences, the Private Hire Vehicles (London PHV Licences) Regulations 2004.
16. The relevant regulations, for the purposes of this appeal, are the Operators' Licences Regulations. TfL amends these regulations from time to time to protect passenger safety, secure the other objectives set out in the Mayor's Transport Strategy and to keep pace with industry changes.
17. The purpose of the Operators' Licence Regulations, together with the 1998 Act, is to give Londoners confidence, when they use a licensed PHV operator, that they are using the services of an honest, professional organisation (that will deliver safe drivers and vehicles). This aim is clear from the specific requirements that are imposed by the Regulations themselves.
18. The Operator's Licence Regulations impose a wide range of obligations on operators. By way of example only:
- (a) Regulation 9 sets out conditions which apply to the grant of any licence. These include (Regulation 9(4)) that if: (i) any conviction is recorded against an individual operator, a partner of the operator's firm, or against the officer's body or group; (ii) any information provided in the application for the grant of a licence changes; or (iii) any driver ceases to be available for the operator for the carrying out of bookings by virtue of unsatisfactory conduct in connection with the driving of a private hire vehicle, the operator must, within 14 days of the event, give the licensing authority notice containing details of the conviction or change, or in the case of an individual driver's unsatisfactory conduct, his name and the circumstances of the case **[EX1/C/3]**.

- (b) Regulation 9(7) requires an operator to establish and maintain a procedure for dealing with complaints and lost property [EX1/C/3].
  - (c) Regulation 9(13) requires an operator to notify the licensing authority of any material changes to its operating model that may affect the operator's compliance with the 1998 Act, the Operator's Licence Regulations or any conditions of that operator's licence, before those changes are made [HC-1/C/3/939].
  - (d) Regulation 14 makes clear the obligation to keep a record containing particulars of any complaint made in respect of a private hire booking accepted by the operator, and any other complaint made in respect of his undertaking as an operator [EX1/C/3].
  - (e) Regulation 16 requires operators to maintain records (including records of bookings) for at least twelve months [HC-1/C/3/938].
19. Section 3(3) of the 1998 Act [EX1/C/2/97] sets out the requirements that must be satisfied before TfL, as licensing authority, can (and must) grant a licence.<sup>1</sup> This provides that TfL shall grant an operator's licence where it is satisfied that the applicant is "*fit and proper person*" to hold a London PHV operator's licence, and any such further requirements as TfL may prescribe are met.
20. I understand that the phrase "*fit and proper*" is used in a number of statutory contexts, and its meaning is context-specific: a person who is "*fit and proper*" for the purposes of one licensing regime may not be for the purposes of another. I understand that the Courts have confirmed that licensing authorities may take into account "*anything which a reasonable and fair-minded decision maker, acting in good faith and with proper regard to the interests both of the public and the applicant, could properly think it right to rely on*".<sup>2</sup>
21. I understand that the courts have also accepted that past misconduct by the licence holder is a relevant consideration to take into account in every case

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<sup>1</sup> If TfL concludes that those conditions are no longer satisfied, it may suspend or revoke the licence (see further below).

<sup>2</sup> *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889, §23.

when considering whether to renew a licence.<sup>3</sup> The weight to be accorded to past conduct will depend on the circumstances of the case.

22. TfL publishes a guide for applicants who are applying for a London private hire operator's licence [EX1/D/79]. Part 4 [EX1/D/79/1135-1138] refers to the statutory requirement that the applicant is a fit and proper person. The guide sets out the process that TfL will follow in reaching decisions on applications for operator's licence(s). It also clarifies that TfL may impose bespoke conditions on individual licences in particular circumstances. Amongst the criteria for assessing operator's licence applications are:

"Section 3(3) (a) \*\* - the applicant must be a "fit and proper" person. In order to be considered as such, applicants will be expected to demonstrate that they have complied with other legal requirements connected with running a business. Failure to do so could result in the refusal of an application."

23. The guide sets out the other factors that TfL will consider when determining whether a person is fit and proper to hold a licence. It refers to the requirement for applicants to declare any prior convictions, bankruptcy, director disqualification orders, requirements relating to health and safety, accounts and insurance, provide proof that the operating centre complies with local planning regulations, supply evidence of their right to work and reside in the UK and provide details of any prior licence refusals, revocations or suspensions.
24. The guide also explains, in Part 4b, that part of the consideration of an operator's licence application is an inspection of any operating centre(s) named in the application form. Applicants are expected to show that they comply with all of the administrative obligations listed in Part 4.
25. Section 3(5) of the 1998 Act [EX1/C/2/98] provides that "*a London PHV operator's licence shall be granted for five years or such shorter period as the licensing authority may consider appropriate in the circumstances of the case*". I understand that this provision confers a broad discretion on TfL to decide the duration of any particular licence. The discretion must be exercised for proper reasons, but Parliament has chosen not to impose any constraint on the kind of factors that might justify the grant of a licence for less than five years in any particular case.

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<sup>3</sup> *R v Knightsbridge Crown Court, Ex parte International Sporting Club (London) Ltd. and Another* [1981] 3 W.L.R. 640.

26. As at 23 March 2018, 114,054 individuals hold current PHV driver's licences, 88,317 vehicles are licenced as private hire vehicles and 2,375 people or entities are licensed as PHV operators. Operators vary in their size, from single driver-operators through to operators with thousands of drivers registered to their platform. TfL's approach to regulation and licensing must accommodate a wide range of situations and levels of sophistication.
27. The traditional (or historic) PHV operator business model was to receive and accept bookings by telephone at the operating centre or by attending a booking office in person. Operators ordinarily published a telephone number by which customers might get in contact and book a private hire vehicle or were located in convenient locations, to enable members of the public to walk in and book a journey directly at the operating centre. Recent advances in technology have changed the way private hire services can be delivered in (and outside) London. Web and app based services have become an increasingly popular method by which PHV bookings may be made and accepted. This presents opportunities to both operators and customers to access the services via different methods. On the other hand, the current licensing framework under the 1998 Act was not drafted with these models in mind: the internet was in its infancy in 1998 and the smartphone had not been invented. This presents challenges to TfL and other regulators, in its interpretation and application of the licensing regime.
28. In 2011, the Department for Transport ("**DfT**") invited the Law Commission to undertake a review of taxi and PHV licensing. The Commission published a final report with recommendations and a draft Bill on 23 May 2014 [**HC-1/B/1/59-350**]. The report included a comprehensive set of proposals to update and replace existing taxi and PHV legislation. The Government has not formally responded to the Law Commission's report. The report made the following observation about licensing legislation, including the 1998 Act **HC-1/B/1/69**):
- "...even this comparatively modern legislation [1998 Act] struggles to keep up with the radical changes which the internet has introduced in the way customers book private hire services"
29. Despite this review by the Law Commission concluding as recently as 2014, many of the recommendations made in their final report and draft Bill are

already out of date due to the swift advances in technology and the popularity of app-based products in the private hire and taxi industries since 2014.

## Uber and ULL

30. As at 19 March 2018, of the 114,054 individuals who hold current PHV driver's licences, 43,408 are drivers for ULL: approximately 38% of the total market. ULL currently has the largest number of PHV drivers in London; the next largest operator has 4,012 drivers.
31. When it obtained its licence to operate in 2012, ULL was the first exclusively app-based operator to enter the PHV market in London although app based services did exist in the taxi industry in the form of Hailo (now MyTaxi) and Get Taxi (now Gett). Some traditional private hire operators have now developed app-based booking platforms. However, they typically also still accept bookings via telephone and other means as well. Uber accepts no bookings by phone, but only via its app, which is installed on the smartphone of each of its customers. Although there are other app-based applicants now entering the market, ULL is currently the largest app-based operator, or indeed operator of any kind, in London.
32. As explained in Mr Elvidge's witness statement [Elvidge ¶27-9], ULL is one of several entities that operates under the Uber brand. Uber has been described (non-pejoratively) as a "*disrupter*" in the new global economy. In his statement, Mr Elvidge refers to Uber's "*digital disrupter*" mindset [Elvidge ¶25].
33. Uber's previous Chief Executive was Travis Kalanick who resigned as Chief Executive in July 2017 although remains a Board member of Uber Technologies Inc (UTI). The business model that he deployed at Uber, and his approach to regulation, has attracted criticism in some quarters. Mr Kalanick is reported as saying in 2014 "*You have to have what I call principled confrontation,*" and "*That is the thing we do that I think can rub some people the wrong way.*" [HC-1/B/2/357]
34. I consider that this approach was often evident in ULL's communications and contact with TfL prior to TfL's decision in September 2017 not to renew ULL's PHV operator's licence. It manifested itself in a sometimes dismissive attitude to the regulatory regime in London and to TfL itself. Despite being a multi-

national company worth several billion dollars, Uber and ULL were sometimes confrontational and provocative interlocutors. Mr Elvidge accepts this view in his witness statement, where he recognises that **[Elvidge ¶¶25, 59]:**

"The attitudes, approaches and, in some cases, people, driving the business to innovate have not always been in keeping with the custodianship of a business that wants to build long-term partnerships with all its stakeholders"

"[ULL] has accepted it needs to undergo profound change in the way it does its business, and in particular it interacts with its regulator, even if this means slowing down or stopping some of the ways in which it seeks to innovate in its service and drive up the use of, and demand for, PHV services."

35. Ms Powers-Freeling suggests that this culture of "*hostility*" to regulation is common in dynamic start-up business; an important part of her role is to move ULL towards a more collaborative approach **[Powers-Freeling ¶9(c)]**. As I set out in more detail below, this confrontational approach sometimes undermined TfL's objectives of good licensing regulation and public safety prior to TfL's licensing decision in September 2017.
36. TfL welcomes competition in the PHV industry and the advance of new technologies, but it expects operators to respect the licensing regime that regulates the industry. Uber and ULL have used innovative and ambitious technology and business models to provide a service to millions of Londoners. However, TfL as regulator has a duty to ensure that the way in which ULL operates complies fully with the licensing and regulatory framework in London and to preserve the safety of the travelling public.
37. Since TfL's decision, and the appointment of Uber's new Chief Executive, Dara Khosrowshahi, TfL had a number of constructive discussions with Uber and ULL. ULL and Uber have adopted a new approach and have, so far, engaged with TfL in a more positive way. Uber's Chief Executive, Dara Khosrowshahi has committed to improve the relationship with TfL and other regulators. Uber and ULL have also revised their corporate governance structures, with a view to reforming their culture, in order to deliver on that commitment. TfL recognises the importance of those changes. TfL expects to have a constructive dialogue with its operators; that is the ordinary state of affairs with other operators in the market. The changes to ULL's culture and approach have come late, but they demonstrate that Uber and ULL recognise that their previous approach to regulators – whose role it is to ensure public safety – was flawed.

## ULL's licensing history

38. On 31 May 2012, TfL granted ULL a London PHV operator's licence (licence number 7979) for a period of five years **[EX1/D/3]**. The licence was not subject to any specific conditions.
39. Mr Elvidge states that *"at no point during the course of the licence term did TfL suspend or revoke ULL's licence, or, as far as I am aware, suggest to ULL that it had concerns as a result of which it was considering suspension or revocation."* **[Elvidge ¶47]**
40. This is inaccurate. Over the course of 2014, TfL engaged in a sustained dialogue with ULL concerning its operating procedures. While I did not participate in the review at the time, it is clear to me from the correspondence that TfL entered into that dialogue in order to determine whether or not to take enforcement action against ULL including (possibly) revocation of ULL's licence. That dialogue considered:
- (a) Whether ULL (or another party) can properly be said to *"make provision for the invitation or acceptance"* of PHV bookings or *"accept"* those bookings, for the purposes of section 2 of the 1998 Act.
  - (b) Whether or not ULL PHVs are 'equipped' with a taximeter, for the purposes of section 11 of the 1998 Act.
  - (c) The significance of both investigations for the purposes of compliance with the regulatory regime is apparent from the correspondence of 28 February 2014 and 8 April 2014, exhibited to Mr Elvidge's witness statement at **[EX1/B/3/5]** and **[EX1/B/5/12]**.
41. One of the options available to TfL at that time was to suspend or revoke ULL's licence. Ultimately, TfL decided not to take those steps. However, it was open to TfL to do so, had ULL's responses supported that outcome. TfL had significant concerns about both ULL's Terms and Conditions and business model. It took the view that they could be addressed and urged ULL to work collaboratively on the issue (see, for example, the letter of 10 June 2014 **[EX1/B/9/]**). Following an extensive dialogue between the parties TfL formed

the view at the time that enforcement action was not necessary. I refer to TfL's 2014 investigation in more detail below at paragraphs 57 to 121.

42. On 28 February 2017, ULL made an application to TfL to renew its operator's licence for a further five years **[EX1/D/20]**. Ms Bertram, then the Regional General Manager for Northern Europe, was the nominated representative on ULL's licence. The correspondence between the parties in connection with this application is referred to in the Statement of Mr Elvidge **[Elvidge ¶48]**, and is exhibited at **[EX1/B/32-36]**. TfL expressed several concerns about ULL's application.
43. First, as to the way private hire bookings are accepted under the Uber model. TfL's concerns at the licence renewal stage derived from two separate public statements by companies within the Uber group which came to TfL's attention in 2016. These cast doubt on ULL's previous statements to TfL about its operating model in the course of correspondence during the 2014 dialogue between the parties. TfL had begun a further round of correspondence with ULL on this question in 2016 but was not satisfied with the responses received from ULL.<sup>4</sup>
44. Second, as explained in Mr Elvidge's statement, in early March 2017, shortly after ULL made its application for renewal, TfL became aware of reports concerning the use of a software program called Greyball **[Elvidge ¶100-129]** **[EX1/D/22/420]**. Greyball is a tool that Uber had allegedly misused to evade or interfere with regulatory or law enforcement activity (see the fuller discussion below at paragraphs 122-162). TfL first wrote to ULL about these allegations on 17 March 2017 **[EX1/B/29]**. Although Ms Bertram replied on behalf of ULL on 24 March 2017 **[EX1/B/30]**, her reply did not directly answer TfL's questions, nor did it assuage TfL's concerns on this point.
45. Third, TfL had already been in correspondence with ULL about the collection of passenger location data after a private hire journey had completed. In April 2017, TfL also became aware of allegations that Uber had been identifying and tagging iPhones in breach of Apple's privacy guidelines.

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<sup>4</sup> These points are addressed in more detail below at paragraphs 57 to 121.

46. Finally, TfL had a number of further queries concerning the behaviour of ULL's drivers and the manner in which it had conducted its operations since 2012.
47. On 16 May 2017, TfL wrote to ULL and explained that it was currently considering whether ULL was fit and proper to hold a PHV operator's licence [EX1/B/32/125-126]. However, there remained a number of outstanding matters, in respect of which TfL had not been able to obtain sufficient and full information to inform its conclusions. They included, in particular, the use of the Greyball tool in London, the tracking function of the app and ULL's operating model. TfL explained that it wanted to arrange for an IT systems architect to attend ULL's offices to review the way ULL's technology and booking process worked. TfL indicated that it was considering issuing a short duration licence, in order to allow all these outstanding issues to be properly considered, before determining whether or not to issue a licence of a five year duration.
48. Although ULL responded on 18 May 2017, that response was inadequate. It did not answer a number of TfL's questions [EX1/B/33/127-131]. There also was insufficient time to enable the review to be carried out before the licence renewal decision needed to be made. As a result and consistent with its letter of 16 May 2017, on 26 May 2017, TfL granted ULL a licence of four months' duration [EX1/B/132-137]. The licence began on 31 May 2017 and expired on 30 September 2017.
49. TfL's May decision letter concluded that, on the information available at that time:
- (i) ULL was a fit and proper person to hold a licence and (ii) its operations complied with the statutory framework in this area. However, it stated that TfL would pursue further enquiries in the forthcoming months.
50. Between May and September 2017, TfL engaged in extensive correspondence with ULL and conducted a number of further enquiries to inform its decision relating to the grant of a new licence. The statutory test is set out above: TfL's primary concern was to determine whether ULL was fit and proper to hold a PHV operator's licence. TfL's conclusions on each of the issues are set out in some detail below.
51. On 18 August 2017, TfL received ULL's application to renew its licence after 30 September 2017 [EX1/D/33].

## **The Decision of 22 September 2017**

52. On 22 September 2017, TfL notified ULL that its licence would not be renewed at its expiry on 30 September 2017 (“**the Decision**”). TfL’s reasons for reaching that conclusion are set out in its letter of 22 September 2017 (“**the Decision Letter**”) [EX1/B/62/]. TfL’s reasons were, in brief:

- (a) ULL had misled TfL in 2014 as to the process by which bookings are accepted through the Uber app. In particular, ULL had provided a materially false picture of the order in which various steps take place when a booking is being accepted. TfL had asked ULL to explain its systems and had been clear that it would rely on its answers when determining the lawfulness of the operating model. ULL’s answers were materially false and misleading.
- (b) ULL had assured TfL that Greyball had not been used for the purposes of evading regulatory enforcement in London. However, TfL did not consider that ULL had been open and transparent about Greyball, despite having been given ample opportunity to state its position clearly. In particular, the extent to which those responsible for Uber’s operations in London were aware of or involved in decisions about the use of Greyball in other jurisdictions only became clear after repeated and persistent questioning from TfL.
- (c) Finally, ULL had demonstrated a lack of corporate responsibility in relation to a number of other issues with potential public safety implications, including reporting alleged criminal activity to the police, the use of Push Doctor and the approach to obtaining enhanced criminal records certificates (ECRCs).

## **STRUCTURE OF THIS STATEMENT AND SUMMARY OF CONCLUSIONS**

53. My understanding of ULL’s position is that it now accepts many – but not all – of the criticisms made by TfL in the Decision Letter (without accepting that ULL was not a fit and proper person to hold a licence in September 2017). ULL’s case on this appeal rests, in large part, upon steps which it says have been taken since the Decision in September 2017 to alter ULL’s systems, structures, personnel, policies and behaviour in order to demonstrate that it is a fit and proper person to hold a London PHV operator’s licence.

54. TfL’s position, in summary, on this appeal is:

- (a) TfL was correct to decide in September 2017 that it would not renew ULL's licence by reference to its historic conduct and practices: ULL was not, on the evidence available at that time, a "*fit and proper*" person to hold a London PHV operator's licence;
- (b) ULL largely accepts many of TfL's findings in September 2017 (though it does not accept TfL's conclusion that it was not a "*fit and proper person*"). Since that decision, it has updated its policies, changed its senior leadership, admitted its past mistakes, recognised that it had a flawed approach to TfL and regulation more generally, and is in the process of taking steps aimed at transforming its corporate culture;
- (c) As set out in detail below, some of the changes introduced by ULL address the concerns that TfL identified in the Decision Letter;
- (d) Other changes – such as those relating to ULL's corporate culture – are more difficult to assess. The very nature of such changes is that they take time to bear fruit;
- (e) Other matters have arisen since TfL's decision on 22 September 2017 that require consideration. For example, at the time of the decision, TfL was not aware of the significant data breach of Uber's global systems which occurred in July 2016 and came to TfL's attention in November 2017. TfL was also not aware of the Ripley system being used to evade regulation in some parts of the world. Finally, TfL is now aware of additional serious cases of historic non-reporting of driver offences. Further information has come to light concerning alleged criminal activity including sexual offences that were reported to ULL prior to the implementation of their new crime reporting policy. Action has not been taken against the driver as ULL failed to report these allegations to the police or TfL.
- (f) The question whether, in the light of the changes made, ULL is now a "*fit and proper person*" is one for the Court, taking into account:
  - (1) the seriousness of ULL's conduct prior to the challenged decision in September 2017 (including the examples of historic failings that have come to light since the Decision);

- (2) the Court's assessment of the significance of the other issues that have arisen since the September decision and whether the Court can have sufficient confidence that Uber and ULL have now disclosed all major compliance issues that derive from the historic operation of these businesses which continue to be reported in the media; and
  - (3) the Court's assessment of the sincerity and effectiveness of the cultural and governance changes made by ULL, as described in its evidence and referred to below;
  - (4) any evidence and submissions relevant to the issue whether ULL is a "*fit and proper person*" made in the course of this appeal by other persons that have been permitted by the Court to participate.
- (g) TfL will assist the Court by pointing out where it disagrees with ULL's interpretation and understanding of the facts; and by identifying both:
- (1) those areas where it assesses that ULL has met TfL's concerns; and
  - (2) those areas where TfL continues to have concerns.
- (h) If after considering the evidence, the Court determines that ULL should be granted a licence, TfL will make further submissions as to the duration of the licence and any conditions that should be imposed.
55. The remainder of my statement is in two parts; the first part addresses each of the key issues raised in the Decision Letter, setting out TfL's position at the time. The second part addresses: (i) any changes that have been implemented by ULL, or that ULL has committed to implementing, since the Decision Letter; (ii) any further information that TfL has obtained in the intervening time and (iii) TfL's views in respect of each matter at the date when this statement is filed. This part will also address certain additional matters that have arisen since September 2017, which TfL considers are relevant to the question whether ULL is a fit and proper person to hold a London PHV Operator's licence.

## PART ONE: DECISION LETTER

56. Paragraph 52 above summarises TfL's reasons for adopting the Decision which was notified to ULL on 22 September 2017 [EX1/B/62/259-279]. This section sets out in detail the facts relating to its decision and TfL's reasons for its decision as at 22 September 2017.

### (1) Acceptance of Bookings: misleading TfL in correspondence

#### The 2014 Correspondence

57. In the Decision Letter, TfL concluded that ULL had supplied misleading and false information about the way in which bookings were accepted through the app. In particular, in correspondence in 2014, ULL had provided a false picture to TfL of the order in which various steps take place when a booking is being accepted.

58. The review of ULL's operating model and the correspondence between TfL and ULL in 2014 was conducted by TfL's then Chief Operating Officer, Garrett Emmerson and TfL's Deputy Director of Enforcement and On-Street Services, Siwan Hayward. I was not involved in the review and did not see the correspondence at that time. However, I have since read all the relevant 2014 correspondence between ULL and TfL and other relevant documents and therefore references to the contents of those letters is from my reading and understanding of that correspondence.

59. Mr Elvidge now appears to accept that ULL provided inaccurate and inconsistent information to TfL in 2014. In particular, he accepts that [Elvidge ¶¶7, 64 and 76]:

"We provided inaccurate and inconsistent information to TfL as to the process by which bookings are accepted through the App."

"... it is clear to me that some of ULL's letters to TfL were unclear, inconsistent and, on occasion, simply wrong."

"...the relevant letters were unclear and confusing, and, on the sequencing point, either incorrect or very likely to have given a false impression."

60. Mr Elvidge also accepts that "...ULL has not been as open with TfL as it ought to have been" and "...at times, it has been defensive" and "As a result, it has not provided the clear, accurate and timely information to which TfL was entitled"

**[Elvidge ¶65]**. Having reviewed the correspondence exchanged between TfL and ULL in 2014 I agree with this characterisation. Having read the correspondence, I believe TfL's questions to ULL are clear and self-explanatory; the responses from ULL demonstrate the defensive, dismissive and hostile nature of its dealings with TfL as a regulator at that time. ULL's responses were also misleading and false in important respects.

61. On 31 January 2014, TfL asked ULL a series of specific questions about its booking process, as part of an investigation into the way in which ULL and its booking systems operated **[HC-1/A/1/1-8]**. Those questions included :

- (a) whether or not Uber BV, through the use of the app or otherwise, is accepting private hire bookings or making provision for the invitation or acceptance of such bookings;
- (b) whether or not ULL, through the use of the app or otherwise, is accepting private hire bookings or making provision for the invitation or acceptance of such bookings;
- (c) whether or not Uber drivers, through the use of the app or otherwise, are accepting private hire bookings or making provision for the invitation or acceptance of such bookings; and
- (d) what is Uber's position on where private hire bookings are being accepted by Uber.

62. As is clear from those questions, TfL was keen to understand how ULL's systems worked and, in particular, which party within the Uber business model was accepting the booking for the purposes of section 2 of the 1998 Act. ULL provided short responses to these questions (and others) on 17 February 2014 **[HC-1/A/2/9-12]**, asserting that neither Uber BV nor Uber's drivers, accept bookings. ULL's explanation was that it accepts bookings at the operating centre: ULL holds the licence, keeps journey, driver and vehicle records, employs relevant personnel and complies with the regulatory obligations placed on an operator's licence under section 4 of the 1998 Act.

63. In a follow-up letter dated 28 February 2014 **[EX1/B/3/]**, TfL asked ULL specifically for data flows associated with the booking process, starting with the

process initiation by the passenger using the App. TfL also asked for details of the timing and extent of any information flow from consumer/app to back-end servers/booking engines to any intermediary servers and through to end driver/app.

64. In its letter dated 17 March 2014 [EX1/B/4/], ULL reiterated that, in its view, it was accepting bookings. ULL set out the process flow as follows:

- (a) Client (at this time, ULL referred to a passenger as a "client") requests a vehicle using the Uber app installed on a smartphone. The client's smartphone forwards the client's requested pick-up location, based on satellite GPS signals, to Uber London Limited's dispatch server.
- (b) Client request is accepted by the dispatch server.
- (c) The dispatch server selects an available licensed PHV driver and forwards details of client request to such licensed PHV driver.
- (d) Licensed PHV driver travels to requested pick up location, collects the client seeking transportation and completes journey.
- (e) At the conclusion of the trip, the driver terminates the trip. The driver's smartphone sends details of the route and drop off location, based on satellite GPS signals, back to the dispatch server, which triggers the calculation of the fare.
- (f) Both the driver smartphone and the client smartphone receive the details of the trip including the total amount charged and the route.

65. ULL also said that it retains full control of all dispatches, including the ability to contact the driver and the passenger, the ability to cancel the request at any point before dispatch and to terminate a pick-up prior to the trip commencing. It said that it has full responsibility for the data stored on the dispatch servers. ULL concluded: "*Uber London is not sub-contracting bookings, but is arranging for drivers (a few of whom hold an Operator's License of their own) to discharge a booking already accepted by Uber London Ltd. As you state in your letter, this is permissible.*"

66. In its letter of 8 April 2014 [EX1/B/5], TfL set out its provisional view on the legal issues based on its understanding of Uber's operating model as understood from ULL's correspondence. The letter invited ULL's comments on TfL's understanding of ULL's operating model, with a view to ensuring that *"the final decision is fully informed by your views and confirmation that our understanding of Uber's method of operation is correct."* It is clear from TfL's letter that it had a genuine desire to understand how bookings are accepted within ULL's operating model.
67. TfL's letter further referred to section 2(2) of the 1998 Act, which makes it an offence for a person to make provision for the invitation or acceptance of private hire bookings or to accept such a booking unless he is the holder of a private hire vehicle operator's licence for London. The letter also referred to the courts' interpretation of the concept of making provision for the invitation or acceptance of private hire bookings.
68. As the 8 April 2014 letter explained, TfL understood that a commercially realistic and contextual approach should be taken to the meaning of the word *"acceptance"* in section 2 of the 1998 Act. A proper construction would emphasise the perspective of the consumer. As TfL explained, it considered that a company which operates an internet site or smartphone application whose function is to put passengers in touch with a PHV operator does not itself *'make provision'* for the invitation or acceptance of private hire bookings, but a company which offers private hire bookings through such a site or app would be making provision for the invitation and acceptance of bookings. TfL's preliminary view at that stage was therefore that Uber BV was not making provision for the invitation or acceptance of private hire bookings.
69. I therefore disagree with Mr Elvidge's suggestion that the meaning of the concept of *"acceptance"* is the root of the confusion in this correspondence. It is my view that the correspondence shows that TfL was very clear about its understanding of the concept of acceptance; it did not suggest that TfL was asking about *"acceptance"* in the sense of *"the first step of the App receiving a request from a customer, which clearly happens before a driver is identified"* [Elvidge ¶97(c)].

70. TfL went on to clarify that it had not reached a decision about whether ULL or its drivers were accepting bookings. TfL said *"If Uber London Ltd, in reality, is not accepting bookings and dispatching drivers, then it appears likely that the bookings are being accepted by the drivers engaged by Uber and at locations other than specified operating centres. If this were the case, there would be a breach of the 1998 Act and it would be appropriate to take regulatory action."*
71. ULL's letter of 22 April 2014 in response [EX1/B/6/] was unhelpful, short and curt. I agree with Mr Elvidge's view that this letter had *"a particularly hostile tone"*, and his acceptance that the response included only a *"small amount of further information"*. [Elvidge ¶72]
72. On reading this letter, I am also taken aback by ULL's response: it does not appear to treat the issues raised about the lawfulness of ULL's operating model with any seriousness and is deliberately vague. Given TfL's clear and repeated attempts to engage in meaningful discussion with ULL regarding its operating model, and to give ULL the opportunity to explain its views, this is shocking. In its letter of 22 April 2014, ULL offered to amend the Uber BV terms of service in order to incorporate a specific reference to ULL's role in accepting the booking.
73. TfL wrote to ULL on 16 May 2014 [EX1/B/7/] stating that the proposed changes to the terms and conditions were not acceptable because they implied to customers that drivers were accepting the bookings. TfL expressed its concern that, notwithstanding ULL's explanations to the contrary, the terms and conditions suggested that drivers were unlawfully accepting bookings directly through the app; this would have involved the commission of a criminal offence.
74. As a result, in its letter of 16 May 2014, TfL required ULL to review and amend its terms and conditions. As TfL explained, if ULL failed to do so, TfL would consider taking enforcement action. As set out above, I do not agree with Mr Elvidge's view that TfL did not indicate that its questions were being asked with a view to taking enforcement action: [Elvidge ¶47].
75. ULL responded on 2 June 2014 [EX1/B/8/] and stated that it did not accept that the terms and conditions implied that Uber drivers were accepting bookings directly. ULL also referred in this letter to the interpretation of the concept of *"accepting"* in the relevant case law and stressed that it *"...is clear that the words "makes provisions for the invitation or acceptance of private hire*

*bookings” should be interpreted commercially.” It therefore took the view that “while it is the case that in a strict legal sense and for the purposes of the law of contract, the PHV driver is regarded as having accepted the booking as the principal contracting party, it is Uber London Limited that “accepts” the booking as agent for the driver for the purposes of the 1998 Act.” [EX1/B/8/24]*

76. TfL’s letter of 10 June 2014 to ULL [EX1/B/9/] stated that, having reached provisional views in its letter of 8 April 2014, it now had to reach a decision on the question whether ULL’s business model involves any breach of section 2 of the 1998 Act. TfL were prepared to allow a further seven days for ULL to satisfy its concerns before taking a decision with regulatory consequences.
77. In the same letter, TfL explained that, looking at Uber’s business model in a common sense way, it was not clear that the things that ULL did included making provision for the invitation or acceptance or bookings or accepting bookings at its licensed operating centre. It explained that, apart from the terms and conditions seeking to interpose ULL as agent for the driver in accepting bookings, there was nothing else in the material seen by passengers that appeared to contain anything to inform them about the role of ULL in the transaction.
78. ULL replied on 17 June 2014 in a detailed and forthright letter which asserted that it believed that its operations complied with the requirements of the 1998 Act [EX1/B/10/]. ULL suggested in the letter that TfL’s position in relation to section 2 of the 1998 Act was somehow influenced by the views, or likely actions, of the London Taxi Drivers’ Association (“**LTDA**”) or the London Private Hire Car Association (“**LPHCA**”). ULL stated that the views of its competitors were not relevant to the proper interpretation of the 1998 Act or the actions that TfL should take as a regulator. From my reading of TfL’s letter of 10 June 2014, I do not consider there was anything that suggested some kind of improper influence over TfL carrying out its role as regulator to ensure that ULL complied with the legislation. I consider that the suggestion in ULL’s letter was unfair and improper.
79. ULL’s letter of 17 June 2014 set out the Uber booking process as follows [EX1/B/10/33-34]:

- (a) GPS data is sent from the smartphones provided by ULL to its PHV drivers to our cloud servers, which in turn transmit such data to potential passengers, who access that data through the Uber App installed on their own smartphones. The PHV dispatch server is controlled and managed via certain tools by the ULL team based in its licensed operating centre in London. The data shows the potential passengers the location of vehicles in relation to the potential passenger's own location, and gives an approximate time for the closest Uber vehicle to arrive at the potential passenger's pick-up location.
- (b) If the passenger wishes to book a vehicle he does so through his GPS-enabled smartphone installed with the Uber App. The passenger can also use the Uber App to ask for a quote before making the booking. The customer's booking pick-up location is transmitted through the customer's GPS-enabled smartphone installed with the Uber App to ULL's licensed operating centre which is using hosted IT infrastructure, where it is accepted and logged on ULL's systems. It is instantaneously sent to the relevant driver. Also at the same time, ULL's systems will respond to the passenger by transmitting data held on its servers giving the driver's name, car type and registration.
- (c) It is accepted that receipt and acceptance by ULL of the passenger's booking takes place at the same time as the relevant driver is notified of the booking. That is an inevitable consequence of the technology used.
- (d) This is said to not alter the fact that ULL accepts the booking on behalf of the driver, evidences that acceptance by recording it, and confirms such acceptance by arranging for details of the relevant driver to be communicated to the passenger. It is also relevant here that ULL can and occasionally does, refuse bookings.

80. Mr Elvidge accepts that the assertion in this letter that "*receipt and acceptance by ULL of the passenger's booking take place at the same time as the relevant driver is notified of the booking*" was not correct [Elvidge ¶76]. He also accepts that it also directly contradicted the later passage, which stated that "*ULL accepts the booking on behalf of the driver, evidences that acceptance by recording it, and confirms such acceptance by arranging for details of the relevant weekend to be communicated to the passenger.*"

81. Mr Elvidge goes on to recognise in the same paragraph that ULL's letters of 17 March and 17 June 2014 were unclear and confusing and, on the sequencing point, were either incorrect or very likely to have given a false impression.
82. At the same time, Mr Elvidge attempts to explain the approach taken by ULL in its correspondence. He says that he does not agree that ULL's statement in its letter of 17 March 2014 that the booking request was "*accepted by the dispatch server*" before a driver was selected was a clear representation, but accepts that it was "*at best opaque*" and that TfL was entitled to understand it to mean that regulatory acceptance occurred before a driver was identified.
83. I view the matter more simply. What ULL said (both in the totality of its correspondence and in this particular letter) was not opaque. It was clear, unequivocal and – as ULL now accepts – false.
84. Mr Elvidge also says that he does not consider that anything he has read or heard within ULL's own documents suggests any intention to deliberately mislead TfL in its 2014 correspondence [Elvidge ¶77]. TfL has not seen any of ULL's internal documents, drafts or analysis on this question (or indeed any of the other issues that are relevant to this appeal), so I am not in a position to comment on whether ULL's false statements were deliberately false. However, I consider that the following points are all fair and reasonable, in the circumstances:
- (a) TfL was entitled to rely on the accuracy of ULL's statements in order to help it make an informed decision: that is the essence of a relationship of trust between a regulator and a regulated entity. Given TfL's clear interest in the question of sequencing, and the extensive correspondence between the parties, I struggle to understand why ULL was, as Mr Elvidge suggests, not sufficiently engaged with the important question of 'sequencing' [Elvidge ¶77].
- (b) Further, and as stated in TfL's decision, ULL must have known how its operating model worked and the sequences that took place. Indeed, I note the tone of the letter of 22 April 2014 from Jo Bertram at ULL [EX1/B/6], stating that in previous correspondence "*we have robustly stated why ULL is making provision for the invitation or acceptance of bookings.*" The impression given was that ULL were extremely confident and sure of their operating processes and their compliance with the regulatory scheme. This is an important part of the background to Mr

Elvidge's concession that the information provided by ULL was "*simply not correct*". [Elvidge ¶76(b)]

85. At paragraph 77 of his witness statement, Mr Elvidge suggests that TfL's final conclusion on this question was taken "*on the basis of the various functions performed by ULL and not on the sequence in which various stages happen in the course of processing a booking.*" Having read all the correspondence from 2014, I do not think that ULL could have been in any doubt about the importance of giving full and accurate information on the sequence of the steps in their booking process. Mr Elvidge refers to TfL's internal advice of 2 July 2014 [EX1/D/5/75-76]. I understand that this was not internal legal advice, but a recommendation report provided to the then Managing Director of Surface Transport, Leon Daniels, from Garrett Emmerson and Howard Carter, TfL's General Counsel. The recommendation report notes that TfL has "*engaged in extensive correspondence with ULL in order to fully understand their business model and in particular to understand the mechanisms by which bookings are invited and accepted.*" The understanding of the operating model informing that advice is said to be "*on the basis of that correspondence*". Part of that understanding was that ULL's staff at the London site control and manage the PHV dispatch server, "*receive the customer's request for a booking, accept the booking, and log it on the ULL system*" and "*transmit data to the driver about the booking...*". On the strength of the July 2014 report, Leon Daniels, acting in accordance with the specific delegation given to him by the Board under TfL Standing Order 130, decided not to take steps to suspend or revoke ULL's private hire vehicle operating licence, and not to take enforcement action against Uber BV, or Uber drivers, in relation to a breach of section 2 of the 1998 Act. This decision was reported to the TfL Board on 3 July 2014. On the same date, TfL wrote to ULL and stated that TfL had concluded that there is no basis for suspending or revoking ULL's PHV operator's licence or taking enforcement action against Uber BV or Uber drivers for a breach of s.2 of the 1998 Act, contingent on the revised terms and conditions being adopted by ULL [HC-1/A/3/13-14].
86. That conclusion was then communicated to the market on 17 July 2014 when TfL issued a notice to all drivers and private hire operators concerning taxi and private hire smartphone apps in London [HC-1/B/3/361-364]. The notice included a section about ULL's operating model and confirmed that TfL had

reached the conclusion that the way Uber operated in London was in accordance with the law as it applies to private hire operators.

The 'Taximeter litigation': Transport for London v Uber London Limited, Licensed Taxi Drivers Association, Licensed Private Hire Car Association

87. Around the same time as TfL's investigation described above, a separate dispute arose concerning whether ULL's vehicles are "equipped" with a "taximeter" in breach of the prohibition in section 11 of the 1998 Act. In order to obtain an authoritative conclusion to that question, TfL issued Part 8 proceedings in the High Court seeking declaratory relief. ULL, the LPHCA and the LTDA were the named defendants. In his judgement of 16 October 2015 [HC-1/B/6/463-476], Ouseley J set out his understanding of the process by which ULL accepted bookings. Those facts were not in dispute; his description was largely taken from ULL's skeleton argument, supported by ULL's evidence [EX1/D/7]. The relevant paragraph of the judgment describes the bookings process as follows [HC-1/B/6/466]:

"12. When booking, the customer can choose a particular type of vehicle. The nearest vehicle of that type available for hire will be shown on the Smartphone screen. The customer then indicates precisely where they want to be picked up, and clicks "request" to make the booking. Uber accepts the booking and Uber's servers in the United States locate the nearest available vehicle of the type requested by the customer. The servers then send the accepted booking to the Smartphone of the nearest driver, who has 15 seconds to accept the booking. If he does not accept it, the server sends the booking to the Smartphone of the driver of the next nearest vehicle to the customer. When the driver takes on the booking, he is sent all the relevant details including the location. He can contact the customer via the Driver App but not via the customer's mobile number. The customer is sent also by the Customer App details of the driver, car and estimated time of arrival." (emphasis added)

88. In its evidence to the Court, ULL had stated that it accepted booking requests before they were allocated to the nearest driver [EX1/D/7/186]. The relevant paragraphs of the statement stated:

"30. ... The customer then clicks "request" to make their booking. ULL accepts the booking and Uber's servers locate the nearest available vehicle of the type requested by the customer. The servers do this by reviewing all of the GPS coordinates of the relevant vehicle type using signals sent from the drivers' smartphones to the servers.

31. Uber's servers will then send the accepted booking on to the smartphone of the driver of the vehicle closest to the customer. That driver has 15 seconds to agree to take the booking. If a driver declines or does not respond within 15 seconds, the servers will send the booking to the smartphone of the next nearest vehicle to the customer. When a driver takes on a booking, he is sent all the relevant details..." (emphasis added)

89. The booking process described in these Court proceedings was consistent with the description provided by ULL to TfL in the course of the 2014 correspondence. In short, ULL clearly represented that it accepts the booking first, before then allocating it to the closest available driver.
90. Mr Elvidge recognises in his statement before this Court that ULL's witness evidence before the High Court in 2015 was not correct when it stated that ULL accepts bookings before a driver has been found. However, he asserts that the inaccuracy in the letter was not material to the Taximeter case and that it was not knowingly incorrect. I agree that the precise sequence involved in booking was not directly relevant to the taximeter case. However, ULL must have known how its own systems operated and, therefore, that the information was incorrect. I cannot accept Mr Elvidge's assertion that this was not "knowingly incorrect". ULL's evidence, supported by a statement of truth, was wrong; that was reflected in the flawed recitation of the facts in the judgment of Ouseley J. Mr Elvidge is certainly right that "*more effort should have been made*" to ensure that the information was clear and accurate [Elvidge ¶80]. ULL provided false evidence to the High Court, consistent with the false information it had provided to TfL, about an important aspect of its own booking system. TfL questions whether ULL has documentary evidence to show that its understanding of the booking process had changed between 2015 and 2016.

The Employment Tribunal Dispute: *Aslam v Uber London Limited* – 2016

91. Over the course of 2016, two separate public statements by companies within the Uber group, which cast some doubt on ULL's statements in the 2014 Correspondence and the Taximeter litigation, came to TfL's attention.
92. First, in 2016, Ms Bertram, the then Regional General Manager for Northern Europe, gave evidence to the Employment Tribunal in a case concerning whether or not ULL's drivers were workers, for the purposes of European law [EX1/D/16]. Her evidence described the booking process in terms that suggested the booking is not accepted by ULL until a driver has confirmed that they are available and willing to take the journey. Her evidence was that confirmation to the customer and acceptance by ULL take place almost simultaneously and after that point. The relevant paragraphs state [EX1/D/16/299, 300, 302]:

“ 45. ULL is responsible for accepting the booking made by a Passenger, as holder of the operating licence. However, at the point that a request is made by a Passenger, there is no obligation to provide a vehicle. As I explain below, the booking is accepted by ULL as the relevant private hire vehicle operator and allocated to the Driver. A booking is not accepted by ULL until a Driver has confirmed that they are available and willing to take it. Confirmation and acceptance then takes place by ULL almost simultaneously. A Driver is entirely free to make themselves available to provide the transportation services or not, which is described in further detail below. As such, the Operator Licence has no impact upon the freedom a Driver has when using the platform...”

53. Once a request is made, and ULL has confirmed a Driver is available to accept the booking, ULL accepts the booking on behalf of that Driver...

60. ULL will receive a booking request from a Passenger. ULL will make this request visible on the Driver's smartphone, together with the first name and rating of the passenger. It is then the Driver's decision whether or not to confirm their availability and willingness to take the trip. If they do chose to take the trip, they will touch to confirm to ULL that they are available and willing to take the trip. Having done so, ULL accept and confirm the booking to the passenger on behalf of the Driver, and almost simultaneously and instantaneously allocate the trip to the Driver.” (emphasis added)

93. This description is materially different from that given to TfL in the 2014 correspondence and that given as part of the High Court Taximeter case. Whereas previously ULL had emphatically stated that it accepted the bookings first, before allocating them to a driver, in the Employment Tribunal it asserted that a booking is not accepted until a driver is available to take it. Ms Bertram's evidence in the Employment Tribunal was designed to reinforce ULL's argument in that particular case, that its drivers were not workers for the purposes of European law, rather they accept the bookings for themselves.

94. Second, in mid-2016 TfL became aware of a judgment of the Superior Court of Justice in Ontario in *City of Ontario v Uber Canada Inc., Uber BV and Rasier Operations BV* [EX1/D/6]. In Ontario, the local regulatory requirements require a booking to be accepted by a driver, in direct contrast to the position in London. The Judge described Uber Canada as a “*super-charged directory assistance service*” and recorded Uber Canada's evidence as being that “*Uber adopts a passive, purely mechanical (if sophisticated) role in enabling the two protagonists (driver and passenger) ultimately to connect with each other and form an agreement and is not a party to the underlying agreement when formed.*” Uber's evidence was that [EX1/D/6/105]:

“A trip is the result of a request made by a passenger using the Rider<sup>5</sup> App and accepted by a driver using the Driver App. None of the respondents [the local Uber company] nor any of their employees or agents accepts calls or requests from passengers for the purposes of arranging transportation, nor does any of them dispatch drivers to passengers. ... the driver has sole and complete discretion over whether to receive, accept or reject requests.” (emphasis added)

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<sup>5</sup> ULL refers to a passenger as “Rider”

95. A review of the judgment raised further questions for TfL. In particular, whether the booking process in London was different from that in Ontario. Alternatively, had Uber presented the same booking process differently in different jurisdictions, in order to satisfy the licensing authorities that they complied with the different requirements of the local licensing regimes?
96. Prompted by the matters identified above, TfL entered into a further round of correspondence with ULL concerning its booking processes in 2016 and began its own investigation in 2017. I was involved with the correspondence at this time.

#### The 2016-17 Correspondence and the Decision: TfL's Concerns

97. In its letter dated 21 July 2016, TfL sought an explanation from ULL about the apparent discrepancy between Uber's evidence in Canada and ULL's description of the mechanism whereby bookings are accepted in London [EX1/B/20]. In particular, TfL enquired whether the booking process was the same in both locations.
98. Mr Elvidge recognises that it should not have taken a letter from TfL pointing out the inconsistencies to prompt ULL to clarify the discrepancies in its explanations [Elvidge ¶85]. I agree. TfL was entitled to expect ULL to have identified these discrepancies and raised them directly with TfL, as well as providing a clear and full explanation.
99. Unfortunately, as Mr Elvidge also accepts, ULL's response of 4 August 2016 [EX1/B/21] was extremely defensive [Elvidge ¶86]. The letter explained that TfL had already conducted "*rigorous enquiries*" of Uber and its operating model in 2014, as a result of which it had formally concluded that there was no basis for any enforcement action. ULL took the view that correspondence TfL received from third parties '*with a direct financial interest in limiting the competition that Uber brings*' should not be permitted to undermine this position, and that the "*latest attempt to challenge ULL's operations is misconceived both legally and factually.*" Once again, I consider that the suggestion that TfL was acting on the initiative of third parties, with a financial interest in the outcome, was unfair and without merit.

100. ULL did not properly engage with the issue being raised and instead focused on the reasons why TfL was asking such questions. It took the view that there was an “*air of complete unreality about an attack on the business based around the kind of technical arguments which are made here*” [EX1/B/21/71]. I recall at the time of receiving the response from ULL being taken aback by its hostile tone. From my perspective, TfL was acting as a responsible regulator and was asking appropriate questions, in light of new information which put into doubt previous assertions made by ULL. TfL made it clear in its notice of 17 July 2014 [HC-1/B/3/361-364] that although it takes into account the reasoned views of others, it reaches an independent view of the law, without improper influence, taking into account all relevant considerations. It also made clear that due to technology advancing quickly, TfL would continue to monitor developments in the way the market develops in London to ensure that operators and drivers remain compliant. ULL’s response in its letter of 4 August 2016 was therefore disappointing and surprising.
101. TfL wrote to ULL again on 13 September 2016, in reply to ULL’s letter of 4 August [EX1/B/24]. TfL reiterated that the Canadian judgment raised legitimate questions about how ULL operates, particularly in relation to differences between the way that bookings are made and accepted in Toronto and in London. TfL therefore requested that ULL provide TfL with a detailed step-by-step breakdown of each stage in the booking process, and added that it would be helpful to receive a flow diagram to demonstrate the process. It also expressed concern about the evidence given by ULL in the Employment Tribunal which again highlighted discrepancies from the ULL correspondence in 2014.
102. ULL responded on 7 October 2016 with a further hostile letter [EX1/B/25]. It explained that it was disappointed that TfL had not given “*short shrift*” to arguments raised by competitors, notwithstanding the assurances given by TfL that it was legitimately investigating in the exercise of its regulatory functions. As regards acceptance of bookings, ULL stated that it was “*unclear what it is specifically that TfL is hoping to establish in this round of correspondence*” and that ULL did not understand why this appeared to remain an issue.
103. The 7 October 2016 letter briefly explained that the software underlying the app is the same worldwide but the “*local configuration and management of the*

*system is not.*" The process of booking acceptance was also set out in a series of bullet points instead of the flow diagram requested by TfL.

104. TfL wrote to ULL on 25 October 2016 and requested that a meeting take place at ULL's operating centre in London and to observe the booking acceptance process in real time showing how the operating centre staff control and manage the booking process [HC-1/A/6/27-28].
105. The meeting took place on 15 November 2016, attended by TfL staff, including myself, at ULL's offices. Although we had requested that ULL show the booking acceptance process in real time, ULL instead hosted the meeting in a conference room and presented a slide deck setting out the process by which bookings are accepted [EX1/D/19]. The slide deck provided by ULL included an explanation of the booking process as follows [EX1/D/19/364]:
  - (a) Rider makes a booking request for pickup using the Uber app to describe the preferred location
  - (b) Uber identifies most appropriate driver for the booking request and system communicates the booking request via the app
  - (c) Driver confirms he/she is able to complete the booking by tapping the driver app
  - (d) Booking is accepted and recorded by ULL
  - (e) Details of the booking are sent to both the rider and driver
  - (f) Rider completes trip. The full booking record is stored by Uber London.
106. The slide deck also included a data download from the Uber system with timestamps which showed a one-second system gap between driver confirming the request, and ULL accepting the booking. During the meeting, I recall asking ULL to provide a copy of the system log that would verify the timestamps between specific transactions, such as between a booking being accepted and the driver confirming their availability, but they were not provided. I also recall asking ULL to confirm how the cancellation process worked where a driver cancelled the journey, although I recall that ULL focused on passenger cancellations. I consider that ULL did not provide TfL with the information that

it had requested to assist it in determining whether the operating model complied with section 2 of the 1998 Act and was unsatisfactory.

107. As noted in Mr Elvidge's statement, TfL requested a copy of the slide deck in January 2017 [Elvidge ¶89]. At that time, and given the inconsistent information it had received, TfL was considering whether it should engage a third-party technical expert to conduct an independent review of ULL's systems, because our request to access the system had been ignored in favour of a slide deck. In the absence of that 'realtime' information, it was unclear how TfL could obtain a definitive and reliable picture of the ULL booking process.
108. TfL wrote to ULL on 16 May 2017, requesting permission for an IT systems architect to visit ULL and review the manner in which the technology and booking process works [EX1/B/32]. ULL responded on 18 May 2017 [EX1/B/33] and noted that it had already hosted a meeting with TfL and a technical architect on 15 November 2016. The letter complained that TfL's "*blanket request to better understand how the booking process works*" was not "*reasonable, necessary or proportionate to its application.*" [EX1/B/33/129]. However, it requested further information from TfL to determine which systems should be reviewed. On 13 June 2017, ULL confirmed that it would host a systems expert at its offices [EX1/B/36/141].
109. TfL appointed Deloitte UK ("**Deloitte**") to carry out the IT systems architect review. TfL asked Deloitte to carry out a detailed examination and review of ULL's technology systems, in particular:

Describe the architecture of the Operator's systems used to manage:

- (a) The booking of a new journey which must include:
- (1) The exact process (including accurate and evidenced timestamps) throughout the booking process, starting with an initial request from a customer and ending when the journey commences;
  - (2) Information concerning whether the process is always the same, for example is the same for bookings made during the day and night?;

- (3) The elements, if any, of the booking process that take place outside the Operator's London operating centre, and where;
  - (4) Description of the role of the Operator in managing the software which facilitates the booking process;
  - (5) Description of the process for bookings when the operating centre is evacuated.
  - (6) The exact process (including accurate and evidenced timestamps) of how the system manages a request by a customer to change destination mid-journey
- (b) Cancellation of a journey by the customer which must include:
- (1) The exact process (including accurate and evidenced timestamps) by which the system manages cancellation of a journey prior to its commencement by the customer;
  - (2) Description of what happens to the cancelled booking;
- (c) Cancellation of a journey by the driver which must include:
- (1) The exact process (including accurate and evidenced timestamps) by which the system manages cancellation of a journey prior to its commencement by the driver;
  - (2) Description of what happens to the cancelled booking;
  - (3) Description of how the system obtains another driver for the customer's journey.
- (d) Cancellation of a journey by the Operator which must include:
- (1) The exact process (including accurate and evidenced timestamps) by which the system manages a cancellation of a journey initiated by the Operator, prior to that journey's commencement;
  - (2) Description of what happens to the cancelled booking;

110. TfL asked Deloitte to explain the process flow in narrative form. That process flow analysis was to include the process flow for booking a new journey, the logical system components that deliver the process flow of the new booking, a narrative explaining the chronologies, locations, and people involved in the booking process. TfL also asked Deloitte to track the business process through each component using date/time/sequence to prove the order/architecture is as described.
111. Deloitte visited ULL between 25 July and 4 August 2017. Deloitte produced a report dated 7 August 2017 which details ULL's technology and booking process [EX1/D/30].
112. The process flows showing the booking process are on page 19 of the report [EX1/D/30/503]. In summary, a booking is made in the following way:
- (a) A request is made by a rider using the Rider App. The system searches available drivers who are online, eligible and meet certain criteria such as estimated time of arrival (ETA). The system decides whether there are appropriate drivers to fulfil the request and notifies the rider of the ETA to pick up.
  - (b) The system checks whether surge pricing is valid at the pick-up point, calculates the trip fare estimate and the ETA and this is displayed on the Rider App.
  - (c) The rider confirms the request and the system chooses the most appropriate driver based upon locally configured rules. The driver has 15 seconds to confirm the trip by tapping their device.
  - (d) When the driver 'accepts' the trip, ULL 'accepts' the trip automatically in the system and a booking record is stored in the ULL database. The system provides the rider with the relevant details of the driver name, photo, rating, ETA.
113. The IT architect review provided TfL with a much clearer and definitive understanding of ULL's booking process.
114. Contrary to ULL's explanations in the course of 2014 and to the High Court in the taximeter challenge, ULL's system automatically 'accepts' the booking only after a driver has 'accepted' the trip. If the first driver to whom a booking is

offered rejects the trip, it is then forwarded to the next available driver. At that stage, no booking has been accepted. ULL's prior assertions, that the dispatch servers arranged for drivers to discharge a booking already accepted by ULL, and that receipt and acceptance by ULL of the passenger's booking takes place at the same time as the relevant driver is notified of the booking were false. Mr Elvidge accepts that conclusion ("*...some of ULL's letters to TfL were unclear, inconsistent and, on occasion, simply wrong*") [Elvidge ¶ 64].

115. In a letter dated 30 June 2017, TfL sought clarification from ULL about whether it had changed its booking process since 2014 [EX1/B/38/145-146]. Jo Bertram responded on behalf of ULL in a letter dated 14 July 2017 which said as follows [EX1/B/41/157]:

"In correspondence with TfL in 2014, our description provided to you of the booking process was much more generic. At the time, Uber was only operating in London in the UK and the correspondence was not focused upon the timing of acceptance in the way discussions have been in previous months. The emphasis of that exchange was confirming that ULL, and not anyone else, accepts bookings for the purposes of the 1998 Act and we did not go into the level of detail which we have done since corresponding on this from 2016 onwards.

To the extent that our lack of precision has caused any confusion or difficulties, please accept our apology ... The detailed process is as has been described to you most recently and in the meeting we held in November 2016. This has been consistently described elsewhere, for example to various licensing authorities across England and Wales and in the witness statement I provided in the *Aslam v ULL* employment tribunal case..."

116. TfL considered that this explanation was unconvincing. I have read the correspondence from 2014 and found it to be clear, extensive and detailed. TfL made specific requests for information about the booking process, pursuant to its concern to identify which party was accepting the booking (ULL, Uber BV or the drivers): the enquiries and answers were not generic. Furthermore, ULL was clear and precise as to the 'chronology' of the acceptance process: its answers did not "lack precision"; on the contrary, they were precise, but materially false. The same is true of the evidence it provided in the *Taximeter* case. TfL did not understand the suggestion that the fact ULL was only operating in London at the time was relevant to the accuracy of its answers and wrote to ULL on 23 August 2017 to ask for clarification [EX1/B54/224].
117. In a further letter of 2 September 2017, written by Mr Elvidge, ULL stated that "*our position on acceptance of bookings has not changed. We have always*

*strived to be absolutely clear that it is ULL which accepts the booking.” He stated that “we are not saying anything ‘different’.” [EX1/B/58/239]*

118. That position is not consistent with Mr Elvidge’s position in his evidence for this appeal where he accepts that the 2014 correspondence was (at the very least in certain respects) not correct [Elvidge ¶¶7, 64, 76(b)]. Nor is it consistent with his acceptance that the correspondence was inconsistent and confusing [Elvidge ¶91]. TfL was quite clear that ULL’s answers and explanation had changed. ULL’s presentation of its processes in 2014 was full, but false in a material respect.
119. Finally, Mr Elvidge says in his statement that he meant to convey in his letter of 2 September 2017 that the technological essentials of the process by which a booking accepted have not changed [Elvidge ¶94]. I do not consider that to be the natural reading of his letter. The reality is that, even in September 2017, when confronted with the reality of the discrepancy between the accounts it had given, ULL was slow to accept that it had misled TfL.
120. I have set out this lengthy correspondence in some detail because ULL’s provision of false and misleading information formed a part of TfL’s reasoning in September 2017, when it decided that ULL was not a fit and proper person to hold a PHV Operator’s licence. Either ULL knew that the information provided was misleading, or it did not understand its own systems sufficiently (despite assertions to the contrary) until such time as it suited them to understand them for the purposes of the Ontario case or the London Employment Tribunal. In either case, TfL considered that this was sufficient to undermine ULL’s fitness to hold a PHV operator’s licence. It is essential, in the interests of protecting the public, that TfL can be satisfied that licensed operators provide accurate, full and frank information that TfL can rely on.
121. None of Mr Elvidge’s explanations for why ULL provided TfL with materially false information persuade me that TfL’s decision was wrong. TfL was acting in good faith and as a responsible regulator throughout its discussions and correspondence with ULL. I remain of the view that TfL was right to conclude – on the basis of the chain of correspondence and the conduct it exposed – that ULL was not a fit and proper person to hold a PHV Operator’s licence.

## **(2) Greyball: Lack of Transparency and involvement of ULL directors in regulatory**

## **evasion**

122. In early March 2017, it came to TfL's attention through numerous press reports, including a report in the *New York Times* [EX1/D/22] and the *Guardian* [HC-1/B/7/477-480], that Uber had developed a piece of software known as "Greyball". The press reported that this technology had been developed to root out and target people that Uber considered were using the service inappropriately. It was reported that it had been used to identify and circumvent the enforcement activities of officials who were responsible for regulating Uber's businesses.
123. Having considered the articles in the press, TfL was concerned regarding the potential use of Greyball. It wrote to ULL on 17 March 2017 [EX1/B/29] expressing concern that Uber had used such technology, and urgently requested an explanation of its conduct. As part of its request for further information, TfL listed a number of techniques that had been reported in the press that Uber had allegedly used to identify those working for regulators with a view to blocking access to the Uber app. These included:
- (a) Monitoring the use of the Uber app via geo-fencing;
  - (b) Monitoring use of credit card information to determine whether a particular card is tied to an institution involved in enforcement;
  - (c) Monitoring device numbers of mobile telephones which may be used by regulatory officials; and
  - (d) Searching social media profiles and other information online to identify individuals linked to such organisations and tagging them accordingly.
124. At the outset, it is important to say that I was frustrated about the unnecessary and lengthy exchange of correspondence that followed with both ULL and Jenner & Block ("JB"), a US based international law firm that was engaged by Uber to conduct an investigation into the use of Greyball technology in different markets worldwide. Despite repeated requests, answers were not forthcoming from ULL or JB. The majority of the significant information that came to light was the result of TfL's persistent following up of previous answers, in order to understand what Greyball was, how it was being used to evade regulatory

officials and whether it had been used by ULL in London or authorised for use by ULL senior management in other jurisdictions.

125. ULL explained to TfL in a letter of 24 March 2017 that Greyball enables it to provide its customers with a modified view of its services **[EX1/B/30]**. An Uber customer typically sees a 'standard' view of the app. However, it stated that Greyball can be used to display different or modified views, depending on the user. A 'Greyball' tag is applied to a particular customer account and, as a result, the standard view is hidden from them. The customer will not ordinarily be aware that they have been tagged, or that they are seeing a modified view of the app.
126. ULL's letter of 24 March 2017 went on to explain that it was undertaking a global investigation into the use of Greyball. Ms Bertram – the author of the letter - expressed confidence that the investigation would not reveal any instances of Greyball being used for identifying and evading officials with responsibility for the regulation of Uber in London **[HC1 x/c]**. The response did not directly answer TfL's questions in its letter of 17 March 2017. Mr Elvidge candidly accepts that there is no doubt that ULL's letter could have gone further and that TfL's criticism in this regard is fair **[Elvidge ¶106]**. I agree that this letter provided only limited information; in particular it offered no specific details about the investigation or who was conducting it. Nor did it answer TfL's questions about how regulatory enforcement officers were identified.
127. On 16 May 2017, TfL wrote to ULL regarding its application for an operator's licence **[EX1/B/32/124-125]**. The letter included five specific questions regarding the use of Greyball technology. ULL responded on 18 May 2017 but only offered limited responses to the questions posed **[EX1/B/33/128]**. Once again Mr Elvidge accepts that this second response from ULL was also not as open or detailed as it could have been, and that ULL should have recognised the importance that TfL attached to the issue and responded accordingly **[Elvidge ¶109]**. In short, TfL asked detailed questions about Greyball; ULL did not answer them (or at least answer them sufficiently).
128. On 26 May 2017, TfL sent ULL notice of its decision on ULL's application for an operator's licence (contemplating the grant of a short four month licence)

[EX1/B/34]. This letter included six specific questions about Greyball which were [EX1/B/34/133]:

- (a) The identity of the external counsel who conducted the investigation;
- (b) When the investigation started and what were its terms of reference;
- (c) What steps were taken in the course of that investigation (specifically in respect of the Uber operation in London);
- (d) Which staff members gave evidence;
- (e) Access to a copy of the preliminary findings of the relevant parts of that investigation; and
- (f) An update concerning when the final report will be contemplated.

129. On 30 June 2017, JB wrote to TfL advising that they were engaged by Uber to conduct an investigation into the use of Greyball technology in different markets worldwide [EX1/B/37]. The letter explained that JB was investigating whether Greyball was used to interfere with or impede regulatory enforcement and that JB's investigation found that there was no indication that Uber used Greyball technology to impede or interfere with regulatory enforcement activities in London at any time. Furthermore, the response from JB stated there was no evidence that any other form of activity was used to identify regulatory or law enforcement officials. It said that the investigation determined that the only use of Greyball technology in London involved its use for internal testing of new services purposes prior to launch; by way of example, a new service might be visible only to ULL employees, enabling them to test the service, before it was made available via the ordinary 'view'.

130. The JB letter of 30 June 2017 specified that five senior Uber officials were interviewed as part of the investigation, and named these individuals as Jo Bertram, Rob van der Woude, Tom Elvidge, Richard Sumnall and Max Lines [EX1/B/37/143-144]. I note that at this time, JB did not interview Matthew Wilson, who was Legal Director for UK, Ireland and [REDACTED] at that time, Harry Porter who was Communications Lead for the UK, Ireland and [REDACTED] at that time and Andrew Byrne who was Head of Policy for the UK. Matthew

Wilson, Harry Porter and Andrew Byrne continue to work for ULL and Uber. I consider it surprising that they were not interviewed as they were all copied into email correspondence concerning the use of Greyball in other jurisdictions (see further below in paragraphs 137, 139 and 141). However, I understand that a further subsequent interview took place with Andrew Byrne (see ULL's letter of 5 December 2017 [EX1/B/89])

131. The Decision Letter notes [EX1/B/62/269-270] that JB did not provide any details of the interviews conducted other than the identity of the five individuals concerned. Mr Elvidge says that he is not sure that TfL intended to suggest that JB should have divulged the content of interviews of this nature and did not ask for any details of those interviews in any event [Elvidge ¶112]. While it is fair to say that TfL did not expect JB to provide transcripts or detailed records of those interviews, as TfL noted in the Decision Letter, JB offered almost no meaningful details at all about the interviews, their focus, whether the individuals in question were employed solely by ULL or other Uber entities and what each individual knew (if anything) about the use of Greyball in and outside the United Kingdom.
132. In its letter of 20 July 2017, TfL followed up on the incomplete information that was provided by ULL [EX1/B/42]. The letter stated that neither the letter from JB, nor the previous letters of 24 March and 18 May 2017, had provided a sufficient and complete response to TfL's questions with regard to the use of Greyball technology.
133. In this letter, TfL requested information concerning the extent of JB's investigation and the knowledge of those senior officials of the use of Greyball technology for the aforementioned purposes in other jurisdictions, in particular Ms Bertram and Rob van der Woude, who was a Director of ULL. TfL expressed concern that, whilst JB had confirmed that it had conducted an "*in depth analysis*", there was very little information provided as to what this analysis entailed, and in particular whether the methods of identifying regulatory and law enforcement officials in London to which TfL had made reference in the letter of 17 March 2017 had been considered for use. Further, and despite being specifically asked, ULL and JB had failed to answer whether Greyball technology was capable of being used for those purposes in London, even if it had not been.

134. Mr Elvidge suggests that TfL asked “new” questions in this letter of 20 July 2017 [Elvidge ¶113]. To the extent that he is suggesting that TfL was pursuing fresh or novel lines of inquiry, I disagree with this characterisation. The questions asked are, in my view, clearly related to the earlier specific questions in relation to which TfL had not received a satisfactory answer. TfL was becoming frustrated with the opaque and limited nature of the responses being provided by ULL, which led TfL to probe further and ask more questions about the use of Greyball technology. TfL was also seeking further clarity of the information given by JB in its letter of 30 June 2017. I consider that TfL’s interest was consistent and reasonable throughout.
135. On 4 August 2017, ULL responded [EX1/B/47] and, on the same day, TfL also received a separate response from JB [EX1/B/46]. ULL stated that “*Jenner & Block’s investigations into other jurisdictions have identified some evidence that certain of the five personnel you [TfL] identify in your letter, who are involved in the ULL business but have a wider, international role, have been exposed to communications regarding the use or potential use of Greyball technology outside the UK in a way that could have impeded or interfered with regulatory or law enforcement”.* (emphasis added) [EX1/B/47/198]. However, ULL took the view that any such actions had had and would have no impact on ULL’s performance of licensed activity in London. ULL also stated that it would be inappropriate for it to comment further on detailed findings about the activities of other group companies and individuals in other markets.
136. ULL stated that it would soon be undertaking a ‘refresh’ of its structure and governance, including amending its constitutional and corporate governance arrangements to establish a PHV Operator Committee chaired by an independent non-executive director which would be responsible for oversight of ULL’s licensed activities (see further below).
137. On 15 August 2017, TfL wrote to ULL to request the key identifying which of the senior officials referenced in its letter of 4 August 2017 had been exposed to communications relating to Greyball use against regulatory enforcement officers in other jurisdictions [EX1/B/51]. On 17 August 2017, JB provided a confidential key identifying the senior officials. The letter also enclosed a copy of the corporate policy governing the use of Greyball [EX1/B/52]. JB’s letter of 4 August 2017 stated that on a “*handful of occasions*” in 2015, Ms Bertram was

party to initial discussions to that effect. I understand that these discussions are now exhibited by the Appellant at [EX1/A/7], but were not provided to TfL until after TfL's Decision letter of 22 September 2017. The emails show that in response to a report of drivers in [REDACTED] being stopped by the police and as part of a series of emails between colleagues, on 26 November 2015 Ms Bertram wrote [EX1/A/7/16]:

"if the police were stopping cars by looking at the App for available cars [or by booking a car] then I would definitely be more aggressive on closing down the view and/or greyballing... If we know who was stopped and when we can track down the users doing this... the first hearing is on Monday, right? I think the outcome here will be pretty influential in how we think about this."

138. Mr Elvidge accepts that the statement that Ms Bertram made "*could reasonably be understood on its face*" to mean that she approved, at least in principle, the use of Greyball against overly aggressive law enforcement authorities [Elvidge ¶115]. I would go further and say that this is the only reasonable interpretation of the words she used.

139. I also note that in response to a later email, again on 26 November 2015 and exhibited at [EX1/A/7/22], Ms Bertram stated:

"when you say close the view do you mean preventing new sign ups until a certain threshold of trips? I'd be open to that – we are still doing that in [REDACTED] in fact and given your demand is far higher than supply at least at peak times it would have less impact on trips than in other cities."

140. Once again, I feel there is only one reasonable interpretation of the words used by Ms Bertram – that she approved and endorsed the use of Greyball and other anti-enforcement tools against overly aggressive law enforcement authorities.

141. I am also concerned by the nature of the remainder of the email correspondence on 26 November 2015 involving Ms Bertram, which was copied to Matthew Wilson and Harry Porter. Further emails were sent to Ms Bertram by Uber employees in [REDACTED] which said "*we just fixed the location scrambler so that when you open the app you will see cars in randomized locations. If they start ordering cars then we could greyball them*", and "*Scramble is up and running now. We can also add a fake POP view when we have a list to greyball.*" Ms Bertram's response to these emails was "*Great – I assume you've let [REDACTED] and [REDACTED] teams know that*" [EX1/A/7/22]. I am

concerned that neither Mr Wilson nor Mr Porter offered any form of caution against preventing enforcement activities by the police in [REDACTED]

142. I have also seen another set of emails involving Ms Bertram concerning enforcement in [REDACTED] with an uberPOP driver on 27 April 2015. Ms Bertram sent an email on 27 April 2015 at 20:30:46 stating [EX1/A/8/55]:

*"Thanks [blank] super useful summary – great job.*

*Speak to [blank] / Florian regarding any other anti-enforcement measures available to us here."*

143. Mr Porter and Mr Andrew Byrne were both copied into these emails, and again I note that neither appeared to question Ms Bertram about the use of anti-enforcement measures or advise against using such tools.

144. I should say, at this point, that I do not consider ULL's initial suggestion in its letter of 4 August 2017 that Ms Bertram had been "exposed to" discussions [EX1/B/47] regarding the use of Greyball to evade regulatory enforcement is a fair characterisation of this correspondence. It seems, rather, that she proactively suggested it, and encouraged other jurisdictions to consider actively using other anti-enforcement measures. By referring to Florian Jenson, who was employed by ULL at this time and worked in the fraud prevention team, as a person to "speak to" regarding "other anti-enforcement measures available", it suggests that ULL and Uber were fully aware of the use of Greyball to evade regulation and were willing to deploy this tool as necessary.

145. JB's letter of 4 August 2017 stated that Mr van der Woude was not aware of the use of Greyball technology being used in other jurisdictions other than for legitimate business purposes prior to March 2017 [EX1/B/46/193]. However, he did have authority to authorise the use of Greyball technology in other jurisdictions by virtue of his position within the Uber group.

146. TfL wrote again on 22 August 2017 seeking information on the jurisdictions in which Ms Bertram had operational responsibility, and the directorships held by Mr van der Woude [EX1/B/53]. By the date of this letter, Ms Bertram had been appointed a Director of ULL (on 18 August 2017) and was noted as the nominated representative of the licence on ULL's licence application. In its

letter of 22 August 2017, TfL also sought information about any instances of misuse of Greyball technology for the purposes of interfering with or impeding regulatory enforcement which had taken place in those jurisdictions. That question was driven by ULL's somewhat vague statements regarding Ms Bertram's being party to initial discussions on a "*handful of occasions*".

147. Mr Elvidge agrees in his statement that "*a handful of occasions*" is somewhat vague, but states that he does not have any reason to believe that the phrase was intended to obfuscate Ms Bertram's role [Elvidge ¶114]. In the present context, where TfL was entirely dependent on ULL to provide specific information as regards a serious regulatory matter, and made clear that it had serious concerns, I consider that the phrase "*a handful of occasions*" was unacceptably vague. TfL was seeking precision from ULL; it did not receive it. As set out above, ULL's prior assertion that Ms Bertram had been "*exposed to*" correspondence is also materially misleading, in the light of the material that TfL later received.
148. JB replied on 27 August 2017 and stated that Ms Bertram has additional operational responsibilities in [REDACTED] Mr van der Woude is a director of over [REDACTED] Uber companies [EX1/B/55].
149. JB informed TfL that it had conducted investigations into certain of Uber's markets in the US and the UK. They had conducted "*only limited investigations concerning markets for which Person C [Ms Bertram] has accountability for operational decisions and certain of the markets where the operating companies are those of which Person E [Mr van der Woude] is a director*" [EX1/B/55/230]. No reliable conclusions had been formed as to the potential use of Greyball technology for the purposes of interfering with or impeding regulatory enforcement in those jurisdictions outside the UK and Ireland. However, it "*is a possibility in [REDACTED] of the relevant jurisdictions outside of the UK and Ireland*".
150. No detail was provided about what these [REDACTED] relevant jurisdictions' were, despite TfL requesting comprehensive answers. Such investigations outside the US and UK might conceivably cover jurisdictions for which Ms Bertram had

operational responsibility, or where Mr van de Woude was a director. JB and ULL declined to provide such information.

151. JB's letter of 27 August 2017 further explained that Ms Bertram was party to email correspondence in 2015 which contemplated the possible use of Greyball technology as a means of addressing what "*appeared to be potentially inappropriate action by local law enforcement*". The email correspondence is referred to above at [EX1/A/7-8]. Details of these communications, the allegedly inappropriate action of local law enforcement, and the other parties to the correspondence were not provided at the time. As mentioned above, they were only provided to TfL after TfL's Decision. JB failed to provide details of which jurisdictions these communications applied to, although it does not assert that the discussions related to a jurisdiction which is not under Ms Bertram's operational control.

#### Reasons for TfL's Concern

152. As shown by the above sequence of events, TfL had to engage in extensive correspondence in order to obtain the incomplete information that it had at the time of the Decision. There remained questions about the extent to which, how often and where ULL Directors and Senior Managers were aware of the possible use of Greyball to evade regulatory enforcement in other jurisdictions. TfL's concerns, at the point of taking the Decision fell under three heads.
153. First, ULL's initial responses to TfL's questions were materially incomplete and dilatory. TfL had to repeatedly pursue and probe ULL on this issue in order to obtain the (still) incomplete picture of the use of Greyball technology that it had at the time of the Decision. That had substantially undermined TfL's confidence in ULL, and in its approach towards its regulator. Consistent with its conduct in relation to other issues, ULL's response to TfL's enquiries was entirely 'reactive'.
154. I note that Mr Elvidge broadly accepts TfL's conclusion that ULL failed to be proactive, open and transparent in its communications with TfL on matters relating to Greyball and that senior officers within ULL had knowledge concerning the potential use of Greyball to impede regulatory enforcement in jurisdictions outside the UK. TfL welcomes this overdue acknowledgement.

155. I also note from Mr Elvidge's statement, that he was not involved in the approach that ULL took to TfL's enquiries about Greyball, which was coordinated through ULL's global functional support teams [Elvidge ¶104]. I am unclear as to who these teams are and what role they have within ULL or the influence they had and continue to have over ULL.
156. Second, there was clear evidence that senior individuals within ULL had been involved in discussions concerning the use of Greyball in other jurisdictions. The extent of these discussions were only known to TfL after the Decision Letter was issued. However, they lend some weight to TfL's concerns about ULL's involvement in the improper use of Greyball at that time. TfL did not accept the assertions in ULL's and JB's letters that the aforementioned actions by senior officials had had and would have no impact on ULL's performance of its licensed activity and were accordingly irrelevant to whether ULL is a fit and proper person to hold a licence in London. After all, Ms Bertram was the nominated representative on ULL's licence application in 2012. On 18 August 2017, Ms Bertram was appointed a Director of ULL and was noted as nominated representative on ULL's licence application made to TfL on the same date.
157. It is also clear from the correspondence received about Greyball that Uber employees in other jurisdictions escalated concerns direct to senior management (including Ms Bertram) regarding allegedly inappropriate action by local law enforcement. The use of Greyball technology was considered as a means of addressing these incidents. These discussions took place in 2015, some two years before Uber globally committed to no longer using Greyball for the purposes of evading or impeding regulatory enforcement. Contrary to Mr Elvidge's view, the involvement of senior leaders within ULL in those discussions is a matter that is relevant to ULL's fitness to be a licence holder in London.
158. Mr van der Woude was a director of ULL until 18 August 2017 when he resigned. ULL informed TfL of his resignation in its letter of 31 August 2017 and confirmed that he has no operational responsibility for the London operation [EX1/B/57]. He remains a director of over ■ other Uber companies. Despite requests for comprehensive information, JB have declined to provide specific information about investigations on the use of Greyball technology in

jurisdictions where Mr van der Woude is a director. It can only be assumed that the ■■■■■ 'relevant jurisdictions' which JB allude to might cover areas for which he is a director. I note that press reports refer to the possible use of Greyball technology to impede regulatory enforcement in Australia and South Korea. Mr van de Woude is a director of Uber Australia Pty Ltd and Uber Korea Holdings LLC [HC-1/B/8/481-484].

159. I consider that it is relevant to ULL's fitness to be a licence holder that its previous director holds directorships in other countries where there is a possibility that Greyball technology has been used for the purposes of interfering with or impeding regulatory enforcement. It has been admitted by ULL that Mr van der Woude had authority to authorise the use of Greyball technology in other jurisdictions by virtue of his position within the Uber group.
160. Third, ULL's subsequent changes to its corporate structures and personnel (see below in more detail) appear to have been made in direct response to TfL's probing, and in the light of ULL's imminent license renewal application. While that does not devalue the changes themselves, it caused TfL to wonder whether those would have been made otherwise. If they were purely 'reactive', this raised further questions about the extent to which ULL proactively desired to change, or was driven to that result.
161. By way of example, as set out above, Ms Bertram had recently been appointed a director of ULL and was the nominated representative of ULL's licence application of 18 August 2017. However, on 31 August 2017, ULL wrote to TfL to advise that Ms Bertram was stepping down and that she had resigned as a Director of ULL on 30 August 2017 [EX1/B/57]. The letter stated that, although she would continue to have operational responsibility elsewhere within the Uber group of companies, she would no longer be engaged at ULL by 17 September 2017 (prior to the expiry of the existing licence).
162. This rapid turnaround was made within days of ULL disclosing the relevant facts concerning Ms Bertram's involvement in Greyball in other jurisdictions. ULL's letter stated that she had "*decided to pursue new challenges*" with an accelerated transition in the United Kingdom and had resigned on 30 August 2017. It would seem from Mr Elvidge's statement that he accepts that TfL's conclusions regarding the chronology of events is fair ("*in order to put the*

*repercussions of that behind us, we needed to make a demonstrable change not only in structure but also to the leadership of ULL's licensed business" [Elvidge ¶¶54 and 58]).*

### **(3) Corporate responsibility: Safety and Criminal Reporting, Push Doctor, ECRCs and lack of regard for customer safety**

163. In the Decision Letter of 22 September 2017, TfL also expressed its concern about various aspects of ULL's activities and conduct which have an impact on the safety and security of the public [EX1/B/62/274-277]. TfL concluded that ULL's behaviour demonstrated a lack of corporate responsibility and that the various incidents cumulatively demonstrated that ULL was not fit to hold a PHV operator's licence. Amongst the examples that TfL relied upon were safety and criminal behaviour reporting, Push Doctor and ECRCs. These are addressed in more detail below.

#### Safety and criminal behaviour reporting

164. On 12 April 2017, the Metropolitan Police Service ("MPS") wrote to TfL and set out its concerns that ULL had not reported allegations of serious criminal offences by its drivers, and that such behaviour was unacceptable [EX1/B/31].

165. The Police referred to a case in which a ULL driver had committed two sexual offences, neither of which were reported to the Police by ULL. The police understood that ULL had held at least some information about the offences at the time. The letter also referred to several other reports of criminal offences made by passengers to ULL that were not reported directly to the police. In relation to two public order offences, the letter said that the delay in reporting meant that no action could be taken, because the period in which proceedings could be brought in the Magistrates' Court had expired.

166. The letter noted what the MPS understood to be ULL's position: it would not report a crime without the direct consent of the passenger, because it may breach the rights of the passenger by doing so. When asked what the position would be in the hypothetical case of a driver who commits a serious sexual assault against a passenger, ULL had confirmed that the driver would be dismissed and TfL would be notified, but the police would not be informed.

167. The letter noted – on the other hand - that ULL was proactive in reporting lower level document frauds to the Police (as well as to TfL). As a result, the letter explained that MPS had two principal concerns. First, that it appeared that ULL focussed on reporting less serious matters / matters considered less damaging to its reputation as opposed to reputationally harmful serious offences. Second, by not reporting to the police promptly, ULL allowed situations to develop that directly affected the security and safety of the public.
168. TfL wrote to ULL on 28 July 2017 [EX1/B/44] and sought its response to the MPS's letter. ULL stated in its reply of 8 August 2017 [EX/B/48] that proactive reporting to the police is a sensitive area and that it tries to balance its regulatory and privacy obligations. The letter confirmed that ULL's general policy was that the choice of whether to make a police report is that of the victim, but that where appropriate, it would encourage a passenger to report an incident to the police. ULL reported issues of fraud to the Police because it itself is the victim. The letter also stated that ULL complies with its legal obligations to report incidents involving deactivation of a driver to TfL [EX1/B/48/204-205].
169. ULL also set out a number of other activities that it undertook in relation to collaborative working with the police. They included a dedicated Law Enforcement Response Team, which is responsible for working directly with the police and other law enforcement agencies to support investigations about incidents involving a partner-driver, or passenger, a dedicated Law Enforcement Portal, etc [EX1/B/48/204-207]. The letter also provided examples of ULL's collaboration with the police during terrorist incidents.
170. With regard to the specific alleged sexual assaults referred to by the police, ULL provided details to TfL of its decision to dismiss the driver on 21 May 2016. Upon notification, TfL immediately suspended the driver on 23 May and notified the police on the same day. Further information was requested from ULL to assist TfL's investigation. However despite the seriousness of this matter, and the need to obtain information urgently, TfL had to ask ULL to provide the information more than once.
171. The handling of the matters raised in the letter from the police caused TfL serious concern about the importance that ULL attaches to the safety of its

passengers and the public. TfL considers that a responsible operator would always respond immediately in respect of matters of public safety in order to ensure that TfL and the police can take all the necessary action against the driver. ULL's approach did not meet that expectation.

172. Mr Jones' evidence – filed on behalf of ULL – offers a number of responses to this point. First, he states that, until mid-2017, there was “*no suggestion that TfL had any concerns about ULL's approach to reporting allegations of criminal behaviour to the police.*” [Jones ¶39] This reflects the fact that TfL was not aware of ULL's policy on reporting criminal offences, in the absence of any direct guidance from ULL, or through being alerted to it by a third party – the MPS in this case.
173. Second, Mr Jones offers a response on behalf of ULL to various incidents of non-reporting highlighted in the correspondence between the parties [Jones ¶43]. As regards the first instance where a passenger alleged that a ‘firearm’ had been used (which later turned out to be pepper spray), Mr Jones concludes that since the police subsequently came to the view that no crime was committed, there was no obligation to report it to the police. This does not follow.
174. In relation to allegations made against a driver that he had committed two sexual assaults, Mr Jones states that he disagrees with the view expressed by the police that had the first allegation been reported, the second would not have taken place. He notes that there are “*lots of possible outcomes*” including that the police would not have followed up the report about the allegation that the driver had asked the passenger to give him a hug, or the passenger may have been reluctant to cooperate with a police investigation. The possibility that the police might not follow up on the information or the passenger may not cooperate does not obviate the obligation on an operator to forward relevant information about a serious crime to the police and I consider that Mr Jones is wrong to try to justify this point. Reporting the crime enables the police to conduct a proper investigation and determine, based on the evidence whether there is a criminal case to answer. Third, Mr Jones relies on an analogy between the policy adopted by Victim Support, who do not report crimes to the police unless they obtain the victim's consent, (unless someone is at serious risk of harm) and the approach adopted by ULL [Jones ¶37(b)]. I do not

consider the analogy to be a good one. Victim Support's role is to support victims of crimes. The same considerations do not apply to a company providing a regulated transport service to the public where it is clear the public expect to use the services safely.

175. Third, Mr Elvidge's statement explains in some detail the circumstances in which TfL's request for information about the driver dismissal was left unanswered [Elvidge ¶150] and states that the email from TfL was sent to Mr Elvidge's individual email account, and that he missed it. That provides at least some context, however TfL expects that an email sent to a Director of ULL about a serious public safety issue would be prioritised, be treated with sensitivity, speed and importance. Notwithstanding these explanations, TfL is of the view that its decision in 2017 about reporting of criminal offences was correct.

176. Finally, and for the avoidance of doubt, TfL accepts that such reporting is not a condition of ULL's (or any operator's) licence. However, TfL expects (and is entitled to expect) that any responsible operator will forward information about serious crimes to both the police and to TfL itself. Passenger safety is of paramount importance; it should also be for its operators. TfL concluded, therefore, that ULL's conduct in respect of criminal offence reporting was relevant to whether ULL was a fit and proper person to hold a licence. I remain of the view that this was the correct conclusion.

#### Push Doctor

177. A part of TfL's role as the Licensing Authority to ensure that all licensed taxi and PHV drivers remain medically fit to transport the travelling public. Regulation 3 of the 2003 Regulations states that taxi and PHV drivers must satisfy TfL that they are medically fit to hold a driver's licence. In assessing whether an applicant is medically fit, TfL has regard to the medical standard that would apply in relation to a DVLA Group 2 licence. This is a more stringent set of requirements than the standard guidelines that would determine whether a member of the public is allowed to drive. In order to assess whether these guidelines are met TfL consults with a team of qualified medical practitioners.

178. Group 2 licences are required for large goods vehicles and buses and the medical standards for Group 2 drivers are much higher than those for Group 1

(ordinary motor cars and motor cycles). This higher threshold reflects the vocational nature of a licensed driver's employment. The Group 2 standard is set out in the DVLA publication 'At a Glance Guide to the Current Medical Standards of Fitness to Drive' [HC1/B/x/y].

179. We provide a TPH/204 medical form [EX1/D/4 and EX1/D/8] to all applicants. It must be completed by a registered medical practitioner who has access to the applicants full medical records. As part of the assessment the registered medical practitioner assesses the applicant's fitness in a number of areas; cardiovascular; cardiac; musculoskeletal; diabetes; neurological; vision; and psychiatric. The medical practitioner is also obliged to provide details of any other pre-existing disease or disability recorded in the applicant's medical records that is not covered by the main categories and is likely to interfere with the efficient discharge of his or her duties as a vocational driver, or to cause driving by him or her to be a source of danger to the public. The doctor then completes the medical form, which is submitted to TfL by the applicant. TfL, via its Occupational Health department which employs qualified medical experts, assesses the contents of the medical form and determines whether the applicant meets DVLA Group 2 medical standards. It is often the case that Occupational Health will request further information about medical conditions identified which requires the applicant driver to re-visit a GP or consultant to obtain this detailed information.
180. A number of important tests must be conducted in the course of a driver's medical examination. By way of example, a registered medical practitioner must complete information on the form concerning questions such as the applicant's blood pressure, eyesight and detail any existing medical conditions.
181. The medical fitness of PHV drivers is of paramount importance for the public safety of passengers and other road users. The DVLA standards emphasise that safe driving requires the involvement of vision, visuospatial perception, hearing, attention/concentration, memory, insight/understanding, judgement, adaptive strategies, good reaction time, planning/organisation, ability to self-monitor, sensation, muscle power/control and coordination. Injury or disease may affect any one or more of these abilities [HC-1/B/27/533-670].

182. In August 2016, TfL's TPH team identified that a number of medical certificates were being received by Push Doctor. The team had no knowledge of Push Doctor at that time and therefore wrote to them on 5 September 2016 to find out more about the medical assessment they carry out [HC-1/A/4/15-20]. I understand that ULL conducted a 'trial' of Push Doctor Push Doctor between 22 August 2016 and 23 September 2016. ULL stated in its letter dated 14 July 2017 [EX1/B/41] that the service was trialled in an attempt "to make use of an innovative solution to save applicants for a private hire driver's licence both time and money".
183. Following the response from Push Doctor on 15 September 2016, TfL had immediate concerns as to the adequacy of the assessment by Push Doctor due to the fact that the assessment was being carried out via streaming video over the internet, rather than in person [HC-1/A/5/21-26]. It also raised questions as to whether the doctors would have access to the patient's full medical records. This concern was echoed by a number of qualified medical practitioners in our Occupational Health team. Upon review of the process, as described by Push Doctor, it became evident that the test enabled self-examination by the applicant of important elements of the test which is clearly prone to either manipulation or error.
184. TfL considered that it was obvious that a comprehensive medical examination of the type required for a PHV licence applicant must be conducted in person. In particular, an eye test or a blood pressure test could not be satisfactorily and reliably conducted via an online video conferencing platform such as Skype. ULL's introduction and promotion of a video link medical examination service was unacceptable and inappropriate. Approximately 800 ULL applicants for new and existing applicants were encouraged by ULL to use Push Doctor and underwent a medical assessment via video link. Those applications threatened to undermine the integrity of the medical examination system and the licensing process that is designed to protect public safety. Furthermore, dealing with the backlog generated by these applications imposed additional pressures on the licensing system: a fresh round of satisfactory and reliable medical assessments had to be requested, carried out by a medical practitioner with access to the applicant's medical history and then submitted to TfL for evaluation.

185. ULL's letter of 14 July 2017 **[EX1/B/41]** states that ULL ceased promoting the service once TfL rejected those applications which relied upon medical checks obtained through Push Doctor. While that is true, the reality is that, for a time, ULL pursued an unsafe and unreliable system – without previous consultation or dialogue with TfL – and only stopped doing so following a direct intervention from TfL. As explained in the Decision Letter, encouraging drivers to undergo medical assessments that are clearly and obviously unsatisfactory demonstrates a lack of regard to public safety and security. This generated real cause for concern within TfL as to ULL's fitness and propriety to hold a PHV Operator's licence in London.
186. Mr Elvidge offers a detailed discussion of Push Doctor in his witness statement **[Elvidge ¶¶153-176]**. I am somewhat surprised by what he sets out there. Mr Elvidge has provided a fuller 'defence' of the use of Push Doctor than ULL offered to TfL at any time during the correspondence between the parties concerning Push Doctor in 2017.
187. By way of example, I am surprised by the parts of Mr Elvidge's evidence where he attempts to justify the use of Push Doctor to satisfy ULL's requirements for medical checks. This is inconsistent with the discussions that have taken place between ULL and TfL since the Decision where ULL has apologised for interfering with the regulatory and licensing processes and given strong assurances it will never happen again. Mr Elvidge notes that confirmation that the person attending the virtual appointment was the same person that was applying for the licence was addressed by requiring doctors conducting the assessments to ask applicants to hold up to the camera his or her driver's licence or passport **[Elvidge ¶164(b)]**.
188. I consider that ULL should not have tried to interfere in the regulatory arrangements that TfL already had in place to carry out medical checks, and should have merely informed an applicant of the requirement to undergo such checks. Mr Elvidge notes that guidance from the Royal College of General Practitioners that presentation of proof of identity upon registration at a GP surgery is not mandatory. I consider that this is irrelevant. The documentary requirements for registration at a GP's surgery are obviously a different matter. It is vital and obvious that identification checks are required to be carried out for

an applicant undergoing a medical examination to ensure it is not being taken by someone else on their behalf.

189. In any event, Mr Elvidge makes a number of important concessions in his evidence, although I do not consider that they go far enough. He candidly points out that ULL should have sought TfL's views on the Push Doctor service before trialling it [Elvidge ¶176]. He recognises that ULL failed to "*put ourselves in TfL's shoes and think about what would be helpful for them. Instead we took a narrow view of what we needed to tell them and when.*" [Elvidge ¶175]
190. Although I welcome these concessions, I do not consider that Mr Elvidge fully understands TfL's concerns about this issue. TfL does not expect ULL (or any other operator) to trial methods to circumvent the regulatory and licensing regime whether this is through discussion with TfL or not. That is particularly the case on a question of the licensing process which fulfils an important public safety function. If a PHV operator identifies a potential issue with any part of TfL's licensing process, this should be raised with TfL as the regulator to determine whether changes should be made. As mentioned above, this concession is inconsistent with the discussions between ULL and TfL since the Decision.
191. Mr Elvidge says that ULL adopted and promoted the use of Push Doctor for financial reasons: it was cheaper [Elvidge ¶163]. As a responsible operator it should be obvious that the licensing process exists to protect public safety. ULL failed to have sufficient regard to public safety, when determining how to make its processes cheaper.
192. Another important concession made by Mr Elvidge is that while he does not accept all of TfL's criticisms of Push Doctor, he recognises that "*With hindsight, I do have a reservation about whether the eye tests were open to abuse by an applicant who was determined to cheat.*" [Elvidge ¶172]. I agree, but would go somewhat further. The delivery of this important medical test via an online platform was wholly unsatisfactory. In September 2016, a representative of Push Doctor sent an email to TfL setting out how it could ensure it satisfied the requirements of the medical test required for PHV driver applicants [HC-1/A/5/23]. In relation to the eye test, the email stated :

"All the patients are sent a pack containing the equipment required for the consultation. This includes Information leaflet explaining the process of the consultations:

Electronic blood pressure monitor  
Stand for the eye test  
Sealed opaque envelope containing the eye charts  
1.5m length of string."

193. The email went on to explain the vision test where all the drivers are given a sealed opaque envelope containing the eye chart with instructions NOT to be opened until instructed to do so by the GP. They are also provided with a stand for the eye chart and a 1.5m length of string to ensure they are standing the correct distance from the chart. The patient is asked to set the stand and position up prior to opening the envelope and in clear view of the GP. Once the correct position is established, the patient is asked to open the envelope and place it on the stand. They return to the correct position and the eye test begins
194. Upon initial consideration of this process the members of TfL's Occupational Health team highlighted that it would not be possible for the examining doctor to identify whether the patient was using both eyes as part of the eye test rather than one eye at a time. They also raised our awareness that the Snellen chart used should be 6 metres away, or 3 metres with a mirror, not the 1.5 metres used as part of this assessment. In any event, I question the validity of any eye test that is carried out using a piece of string where the patient has access to the chart before carrying out the test and the reliability of the test depends on trusting the patient to follow the instructions and not to open the envelope until instructed to do so.
195. Mr Elvidge has also stated that the Push Doctor service relied on the doctor having access to the applicant's summary medical records [Elvidge ¶164]. However, this is contrary to the specific instructions on our medical forms which requires the medical professional to certify that at the time of the examination and completion of the medical form, they had possession of the applicant's complete medical history [EX1/D/4/347].
196. Mr Elvidge highlights in his statement [Elvidge ¶164 (d)] that the standard Push Doctor service was primarily intended for individuals rather than professional checks. As such the service needed to be 'developed and targeted to the specific PHV medical requirements'. Given that the service offered by Push Doctor was not designed for professional assessments, and had not

previously been recognised by TfL, it is clear that Push Doctor should not have been engaged by ULL and ULL should not have interfered in this process.

197. I consider it is important to understand the impact introduced these services had on the applicants. In order for us to complete our investigation it was necessary for us to place each application on hold until we fully understood the process in place. Ultimately this led to each applicant having to arrange for a separate assessment. I understand that ULL reimbursed each applicant the additional cost. Rather than introducing cheaper and more efficient service, by attempting to circumvent TfL's processes, the converse was achieved. This was entirely avoidable.

#### Enhanced criminal records certificates

198. TfL requires all applicants for a PHV driver's licence must provide an ECRC from the Disclosure and Barring Service ("**DBS**") in order to establish they are of appropriate character to hold a taxi or PHV driver's licence. The ECRC fulfils a vital role in enabling TfL to determine that an individual is suitable for a taxi or PHV driver's licence, because it allows TfL to consider patterns of behaviour evident in information that is unavailable through other checks.
199. The DBS searches police records and, in relevant cases, barred list information, and then issues a DBS certificate. That certificate enables employers and licensing authorities to make informed decisions. Comments on the suitability of an applicant may also be obtained from the Commissioners of Police of the Metropolis and City of London under section 8(4) of the Metropolitan Public Carriage Act 1869 [**HC-1/C/1/913**] for taxi drivers and section 13(4) of the Private Hire Vehicles (London) Act 1998 for PHV drivers [**EX1/C/2**]. This information comes from the Police National Computer ("**PNC**").
200. In addition to the information held on the PNC, the enhanced check will also include information held on the DBS's children and adults barred lists together with any information held locally by police forces that is reasonably considered to be relevant to the post applied for.
201. The enhanced check is the higher level of DBS check and is only available for those applying for or working in certain roles that involve working with children or vulnerable adults. It will disclose details of any spent convictions or cautions.

It also discloses details of any allegations or other relevant information that the police feel is relevant to the role being applied for, in this case that of a PHV driver. There are important public protection reasons for this.

202. TfL has a statutory power to apply for ECRCs for applicants of PHV driver's licences. In 2011, TfL appointed another registered body, GBGroup, to obtain ECRCs for PHV applicants on its behalf. As TfL has a contract with GBGroup, it is confident that GBGroup provides the ECRC service in accordance with the DBS's requirements, ensures that the identification of the applicant is independently verified and that the process for seeking the ECRCs is transparent. TfL is able to assure itself of the accuracy and integrity of each certificate obtained.

203. In addition to this they also support the applicants and TfL by:

- (i) Ensuring that the applicants DBS form has been checked and is correct prior to submitting to the DBS;
- (ii) Ensuring that all ID checking has been correctly carried out;
- (iii) Sending all applications to the DBS within 24 hours of receiving the completed form from the applicants;
- (iv) Providing applicants with an update at each stage of their application;
- (v) Providing a dedicated phone line for all TfL applicants;
- (vi) Providing a dedicated TfL administration team to process, monitor and chase delayed applications (over 60 days);
- (vii) Providing an electronic interface between ourselves and DBS to ensure we have the most up to date information on the outcomes of disclosures.

204. Since 17 June 2013, only the applicant for an ECRC will receive the certificate from the DBS detailing the result of the check. In order to ensure there are no unnecessary delays in TfL receiving the information, GBGroup are contracted to write to the applicant once they have received the disclosure to request that

they send TfL the original certificate<sup>6</sup>. Once the authenticity of the disclosure has been verified, GBGroup will take a copy and pass this copy to TfL. GBGroup return the original certificate to the driver.

205. This level of service is not available for an applicant who has used any other provider other than GBGroup. In addition, GBGroup allows TfL to track the progress of an application for and ECRC which is not available to TfL if the applicant uses another provider. That tracking function enables TfL to keep a close eye on the progress of a large number of DBS applications at any one time.
206. ULL explained in its letter of 14 July 2017 that "*From March 2015 until recently, ULL suggested the service provider Onfido to those persons enquiring via Uber's 'Ignition' programme to obtain a DBS as part of their Private Hire licence application.*" [EX1/B/41/170]. This meant that prospective Uber drivers were not obtaining ECRCs through GBGroup, but instead through another provider called Onfido.
207. By promoting the use of a third party provider, ULL circumvented the specific requirements that TfL had secured under its contract with GBGroup, including physical ID checks. Also, applicants were not able to access any of the additional services that TfL had introduced primarily to make the process more efficient for them.
208. In late 2016, DBS advised TfL that only licensing authorities or those authorised to act on their behalf (in TfL's case, GB Group) are permitted to request DBS certificates for applicants for a taxi or PHV licence. Although Onfido, and other DBS providers may be registered and authorised to request ECRCs, they are not authorised to do so on behalf of TfL. In January 2017, therefore, TfL took the precautionary measure of reviewing all applications where ECRCs had been obtained through a third party provider. TfL stopped accepting ECRCs processed by third parties from 23 January 2017.
209. TfL previously adopted a portability policy that it would consider ECRCs which have been obtained as part of the recruitment process for another job, provided

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<sup>6</sup> This is not required where the disclosure is clear i.e. no information has been identified that needs to be disclosed.

the ECRC had been issued in the past three months with the same level of checks as required by TfL.

210. Following consideration of its portability policy and discussion with the DBS, TfL changed its approach to ECRC checks in early 2017 so that it would only accept ECRCs which have been obtained via GBGroup, acting on TfL's behalf, so that it can be confident as to the accuracy of the disclosure because the identification of the applicant was carried out independently. As an exception to this, TfL will accept ECRCs issued as part of an application for a taxi or PHV driver's licence where the registered body is another licensing authority and the ECRC meets the following criteria:

- (i) It is an enhanced DBS check;
- (ii) The workforce code is "other";
- (iii) The job title is "taxi/PHV driver or similar";
- (iv) The registered body is a taxi and PHV licensing authority; and
- (v) It has been issued in past four months.

211. Onfido wrote to TfL concerning TfL's decision to stop accepting ECRCs obtained by providers other than GBGroup. Whilst considering the changes it should make to its approach to ECRCs, TfL noted from Onfido's correspondence that the identification of drivers who had obtained ECRCs through Onfido was being undertaken by ULL. This raised concerns for TfL as to the reliability of those checks, and the ECRCs obtained pursuant to them. Checking the identification of the applicant for an ECRC is a crucial element of the ECRC process. TfL is of the view that ULL was not in a position to conduct those checks independently and impartially. In a letter dated 2 September 2017 **[[EX1/B/58/250]]**, ULL stated that *"Onfido has provided training to 16 Uber representatives in the DBS application process and requirements in order to enable them to check applicant documents prior to the application being submitted and has advised as to the types of documents which are accepted by the DBS for the purposes of their background check"*.

212. TfL was not satisfied with that response. The integrity of the ECRC process relies in part on the independence of the identification checks. A prospective employer (or partner) cannot provide that independent checking service as it compromises the reliance upon which TfL as regulator can place on the results. ULL's approach in arranging for its staff to undertake such checks was unacceptable and demonstrates a lack of proper regard to the safety and security of passengers. TfL did not consider that ULL took into account the safety of the public using its services when it encouraged drivers to obtain checks from Onfido and (more importantly) then agreed with Onfido to conduct the identification checks itself. Although Mr Elvidge refers to DBS Guidance which states that an employer can be involved in the identity check process, the Guidance is generic, and does not specifically relate to ECRCs carried out for the purposes of becoming licensed as a PHV driver. It remains TfL's view that the identity of the applicant for an ECRC should be carried out independently to ensure that TfL can rely upon and have confidence in the accuracy of the results.
213. I am again surprised by the extensive detail that Mr Elvidge has provided about this issue which covers some 20 paragraphs. As with Push Doctor, ULL did not provide this level of explanation for its actions either at the time, or in response to the enquiries that TfL made in 2017.
214. I am also surprised by Mr Elvidge's comment that he does not understand the basis on which this is said to be a safety issue **[Elvidge ¶197]**. This is contrary to the discussions that took place at meetings between ULL and TfL since the Decision that I attended in which ULL accepted it had acted wrongly in the case of the medical and criminal record checks by undermining the licensing and regulatory process **[HC-1/B/12/489-490]** and **[HC-1/B/13/491-492]**. As set out in the Decision letter and above, carrying out criminal records checks on applicants for PHV driver's licences is essential to protect the public, particularly those who are vulnerable. In order to rely on the accuracy of the results of the criminal records checks, the identity of the person who is subject to the check must be certain. Verifying the identity of the person should therefore be done independently. If the identity of the person cannot be relied upon, the integrity of the check would be called into question and it could pose a threat to public safety.

215. Mr Elvidge also suggests in his statement that it is “*striking*” that in January 2016 TfL had “*indicated verbally that it would be acceptable*” to use Onfido instead of GB Group [Elvidge ¶198(b)]. He accepts that “*we did not document that important discussion properly*”. This is clear from the exhibit to which he refers in support of this statement, which is simply an internal record of TfL “*stating verbally*” that it would accept Onfido checks [EX1/D/10/212]. I do not recall at any meeting that I was involved in stating that TfL would accept checks from a third party provider, and I doubt that such an agreement would have been made by others at TfL. In any event it is clear that there is no record of such an agreement. In particular, I do not recall ever telling ULL that TfL would accept ECRCs obtained by any other company than GBGroup.
216. Importantly, from the perspective of the Court, despite this being a significant departure from the TfL application process, Mr Elvidge again accepts that ULL did not do enough to communicate what it was doing to TfL, did not set out or record its own thinking properly and did not proactively seek TfL’s feedback in respect of this crucial public safety process [Elvidge ¶199].
217. TfL was concerned that ULL have on more than one occasion taken steps to interfere with TfL’s private hire licensing requirements in some way. TfL expects responsible operators to discuss its concerns about the licensing processes in a constructive and sensible way, rather than trying to circumvent them. It appears to me that the primary motivator for ULL was to speed up the application process so as to increase the number of licensed drivers working for ULL, without full and proper consideration for the safety of the public.

## **PART TWO - UPDATE ON MATTERS SET OUT IN THE DECISION LETTER**

218. Immediately after the Decision Letter was sent to ULL, ULL’s initial reaction was to issue a public statement signed by Mr Elvidge condemning the Decision and to start a petition against it [HC-1/B/9/481-484]. I consider that ULL’s initial response to the Decision was in keeping with its aggressive and unconstructive behaviour and culture that I refer to elsewhere in this statement. However, three days later Uber’s new global Chief Executive, Dara Khosrowshahi, apologised publicly to Londoners for the mistakes that it had made and accepted that it had got things wrong. The apology was in the form of an open letter from Mr Khosrowshahi addressed to Londoners and was published in the

*Evening Standard* on 25 September 2017 [HC-1/B/10/485]. Mr Khosrowshahi said that Uber would appeal the decision but do so with the knowledge that it must change. He said *"We won't be perfect, but we will listen to you; we will look to be long-term partners with the cities we serve; and we will run our business with humility, integrity and passion."* He finishes the apology by saying *"You have my commitment that we will work with London to make things right and keep this great global city moving safely."*

219. Mr Khosrowshahi travelled to London on 3 October 2018 to meet with TfL's Commissioner, Mike Brown MVO. Vernon Everitt, TfL's Managing Director of Customers, Communication & Technology ("**MD of CCT**") and Mr Andrew Byrne were also present. I did not attend the meeting but I understand from discussions with the Commissioner and MD of CCT and from the note of the meeting [HC-1/B/11/487] that Mr Khosrowshahi offered a personal apology on behalf of Uber global and ULL for its behaviour. I understand the meeting was constructive and centred on what needed to happen to ensure a thriving taxi and private hire market in London where everyone operates to the same high standards. This meeting was the start of a dialogue process between TfL and ULL.
220. Following this meeting, on 5 October 2017, Andrew Byrne wrote to TfL requesting a detailed discussion with TfL in light of the issues raised in the Decision [HC-1/A/8/31-32]. He explained that ULL wanted to understand TfL's concerns and consider what could be done to address them. I replied on the 6 October 2017 and agreed that such a meeting could take place but would be in the context of any appeal that may be made [HC-1/A/9/33-34]. The meeting took place on 13 October 2017 and was attended by Vernon Everitt, Peter Blake, the then Director of Service Operations, Andrew Antoni, Taxi and Private Hire Stakeholder Relations and myself from TfL and Andrew Byrne and Fred Jones from ULL. ULL reiterated the apology for its past mistakes and sought both to understand TfL's concerns and also to understand how it could contribute positively to transport and serve its customers better in London (see the note of the meeting at [HC-1/B/12/489]).
221. Since those initial meetings, a series of meetings between TfL and ULL have taken place on the following dates to discuss TfL's concerns around public safety including those raised in TfL's Decision Letter, and what steps ULL could

take to address those concerns so as to enhance public safety while they continued to operate during the appeals process:

- (i) 3 October 2017 [HC-1/B/12/487]
- (ii) 13 October 2017 [HC-1/B/12/489]
- (iii) 27 October 2017 [HC-1/B/ 13/491-492]
- (iv) 2 November 2017 [HC-1/B/14/493-494]
- (v) 9 November 2017 [HC-1/B/15/495]
- (vi) 15 November 2017 [HC-1/B/16/497-498]
- (vii) 21 November 2017 [HC-1/B/17/499]
- (viii) 4 January 2018 [HC-1/B/28/671]
- (ix) 9 January 2018 [HC-1/B/29/673]
- (x) 10 January 2018 [HC-1/B/30/675]
- (xi) 11 January 2018 [HC-1/B/31/677]
- (xii) 15 January 2018 [HC-1/B/32/679]
- (xiii) 23 January 2018 [HC-1/B/33/681]
- (xiv) 13 February 2018 [HC-1/B/35/713-714]
- (xv) 12 March 2018 [HC-1/B/38/881]
- (xvi) 20 March 2018 [HC-1/B/40/911]

222. I have attended several of these meetings but not all of them. I understand that additional meetings have also taken place between the MD of CCT and ULL. It has been evident to me and others in TfL that ULL has adopted a new approach to engagement with TfL as the regulator of the London PHV sector.

223. ULL has sought, through discussions with TfL, to obtain detailed feedback on the reasons for TfL's Decision and to understand how it might alter its behaviour and approach to ensure compliance with regulations in many areas. ULL has subsequently made a number of public commitments to demonstrate this new approach. As part of the dialogue process, ULL has provided a number of key documents to TfL that are designed to address TfL's concerns arising out of the Decision and other factors. These are summarised by Mr Elvidge in his statement [Elvidge ¶60]:

- (i) The "*Submission on the Application for Renewal*" of 17 November 2017, sets out ULL's proposals to respond to TfL's concerns in its Decision Letter about reporting of alleged criminal incidents, obtaining medical certificates, obtaining DBS criminal disclosure checks and Greyball. It also describes ULL new corporate responsibility processes [EX1/B/79]. An updated version was provided on 12 January 2018 [EX1/B/101]
- (ii) The "*Contextual Issues Submission*" of 17 November 2017, sets out ULL's proposals regarding drivers hours, congestion, drivers in cities outside of London and real-time identification for drivers [EX1/B/78].
- (iii) The "*Acceptance of Bookings Submission*", updated on 11 January 2018, sets out ULL's proposals to make changes to its operating model in order to ensure that there was no doubt as to its compliance with section 2 of the 1998 Act [EX1/B/87]. This is explained in more detail in Part Four below.
- (iv) The "*Culture and Governance Submission*" (updated on 30th January 2018) [EX1/B/100] and [EX1/B/106] outlines ULL's new structure and the enhancements being made to UTI's overall governance, designed to ensure that there is proper structure in the oversight of licensed operations and the conduct of ULL's business. This reflects ULL's commitment to act as a responsible and constructive partner with TfL in the future.

224. In addition to the meetings described above and the Submissions, there has also been further ongoing correspondence between TfL and ULL. This correspondence has primarily focussed on the following areas:

- a) Greyball and its use to impede or avoid regulatory or law enforcement in London as well as across Uber in all jurisdictions;

- b) TfL's concerns about ULL's operating model; and
- c) The data breach in 2016 which came to TfL's attention in November 2017.

I discuss these in more detail below.

225. Following the meetings and correspondence as well as the commitments made in the Submissions described above, TfL considers that the issues in this appeal have been narrowed (although it is, of course, for the Court to consider what is relevant to ULL's fitness to hold a licence). The remainder of my statement adopts the following structure:

- (a) First, I set out and discuss the changes introduced by ULL following the Decision: personnel changes, cultural shift and process changes;
- (b) Second, I revisit the issues addressed in Part 1 and consider how ULL's changes have addressed or responded to the concerns raised in the Decision Letter;
- (c) Third, I address other matters that have arisen since the Decision, in particular the 2016 data breach and Ripley;
- (d) Finally, I set out various other matters that are relevant to this appeal, including the recent correspondence between the parties concerning ULL's compliance with section 2 of the 1998 Act.

226. Throughout the remainder of this statement, I set out the areas where TfL has outstanding concerns, those matters in respect of which it considers that ULL's proposed reforms are recent and unproven and those questions on which it is now satisfied by ULL's reforms.

### **ULL's changes to culture and governance**

227. Since the Decision Letter, ULL has implemented a number of changes in an effort to improve its approach to provision of information to regulators. This forms a part of Uber's and ULL's overall reform of its corporate culture and approach. Mr Elvidge sets out the high level themes that ULL has sought to address [Elvidge ¶98]. They are:

- (a) Culture: a commitment to coming forward proactively with information on “*any issues in which TfL has an interest as regulator*”.
- (b) Constructive engagement: working closely, collaboratively and constructively with regulators in London and across the UK.
- (c) Understanding the regulator: being more aware of the challenges that TfL has in carrying out its regulatory tasks and being proactive about coming forward with information on changes and broader issues in which TfL may have a more general interest.
- (d) Proactivity: undertaking to notify TfL of any material changes to its operating model.
- (e) Quality Assurance: codifying and enhancing internal processes to ensure that individuals with the most understanding are involved in formulating responses to TfL inquiries.
- (f) Regulatory Understanding: ensuring a clear and consistent internal understanding of regulatory obligations.
- (g) Technical Understanding: ensuring that all regulatory communications containing technical information are even more thoroughly reviewed by those within ULL who have a good understanding of the technology.

228. ULL has evidently taken steps to ‘reset’ its relationship with TfL (mirrored to some degree in Uber’s global culture change). In relation to ULL’s commitment to notify TfL of any material changes to its operating model, it is important to note that ULL is already obliged to do this by way of the regulation 9(13) of the Operators’ Licences Regulations referred to above.

229. ULL’s Submission titled “*Submission on the Application for Renewal*” dated 17 November 2017 set out how it would address) the specific issues raised in the Decision [EX1/B/79]. ULL also set out a number of commitments that were designed to improve its working relationship with TfL. They were:

- (a) ULL undertook to provide accurate and prompt information that TfL can rely on through appointing a senior member of staff (who will be called the Head of

Compliance) to act as a dedicated interface with TfL, and ensure TfL has access to all information it needs in a full and frank manner.

- (b) ULL's Head of Compliance will work closely with ULL's Legal and Regulatory Operations teams and ULL directors to manage a comprehensive compliance programme for ULL.
- (c) ULL has committed to proactively come forward with information about proposed changes in relation to issues in which TfL has an interest as a regulator, although ULL is already obliged to do so by virtue of Regulation 9(13) of the Operator's Licence Regulations.
- (d) ULL has committed to submitting a comprehensive risk assessment to TfL in advance of any significant changes that would impact customers or drivers using the app. ULL has also committed to notify and engage with TfL on changes as they develop to ensure that all licensing requirements are met and safety aspects considered.

230. The witness statements of Mr Elvidge, Mr Jones and Ms Powers-Freeling set out those changes in some detail. I address what I understand to be the key themes in turn below.

#### Personnel Changes and Changes to Governance Structure

231. As Mr Jones explains, ULL has changed its constitution and governance arrangements since the Decision. On 29 September 2017 ULL established a licensed operations management Committee ("**LOMC**"). It now meets on a monthly basis and works to support the role performed by the new ULL Sub-Committee for licensed operations [**Powers-Freeling ¶11**]. The Sub-Committee has specific responsibility for matters relating to ULL's licence, including compliance. LOMC now has formal terms of reference and performs various tasks in relation to licensed functions, including reviewing changes to process or products, ensuring reporting of compliance breaches, and overseeing ULL's relationship with regulators [**Jones ¶17**]. Ms Powers-Freeling also clarifies that, where there is a conflict between the instructions of UTI (ULL's parent company) and ULL's obligations to TfL (as regulator), the Board

will have a duty to inform UTI that it must report its concerns to TfL [**Powers-Freeling ¶20**].

232. There have also been changes to ULL's personnel. Ms Powers-Freeling was appointed as an independent non-executive director of ULL on 1 November 2017. Ms Powers-Freeling explains her role in her statement as against the new structure of decision making within ULL. She now chairs the ULL Board and the Sub-Committee [**Powers-Freeling ¶11**]. Her role is to "steward" ULL in to a position in "*which it can meet its commitments to all its stakeholders and can operate in a compliant, transparent, culturally appropriate and sustainable way.*" She sees herself as a "*backstop of responsibility*" for ULL.
233. On 20 March 2018, Ms Powers-Freeling met TfL's Commissioner to explain the changes that had already been made in London to the culture, structure and governance of ULL as well as updating the Commissioner on progress with appointing further non-executive Directors [**HC-1/B/40/911**].
234. I consider these are changes, that, in principle could improve ULL's ability to meet its regulatory obligations and that ULL will be subject to greater oversight and challenge in respect of its operations. It is difficult for TfL to assess at this stage the practical consequences of those changes as they are so recent.

#### Cultural shift

235. ULL's Culture and Governance submission of 30 January 2018 sets out that "*one of the fundamental principles embedded in to the company's ethos is to 'do the right thing'*" [**EX1/B/106/618**], and it details a number of new cultural norms which are designed to "*ensure that the Uber culture is one where every person feels respected and challenged, and each employee becomes accountable for upholding those norms*" [**EX1/B106/619**].
236. ULL's vision for cultural change is set out at paragraph 4.6 of the Submission, which details several strategic priorities [**EX1/B/106/624**]. These were approved by ULL's Board in December 2017 and communicated to ULL's employees. I note that the policies to which ULL adheres have been set out in a Handbook which was launched internally to the UK office on 21 February 2018. TfL understands that ULL is working on detailed plans and operational metrics

to track performance and progress against these priorities, which include [EX1/B/106/624]:

- (a) *“Be a trusted partner of regulators and communities”*
- (b) *“Stand for safety”*
- (c) *“Reinforce what it means to be a partner-driver”.*
- (d) *“Reset our reputation with riders” .*

237. The draft Compliance Protocol developed by Ms Powers-Freeling codifies ULL’s corporate culture in so far as its regulatory obligations are concerned [Powers-Freeling ¶24]. It records key principles to ensure that ULL and other companies within the Uber group support ULL’s compliance with its statutory responsibilities.

238. Given the concerns that TfL has previously raised as regards ULL’s failure to timeously and accurately communicate with it on significant regulatory issues, the development of a codified set of principles setting out ULL’s commitment to ensuring a responsible relationship between companies in the group and with regulators is important.

239. However, this agreement in principle on ULL’s commitment to such values has not yet had the chance to come to fruition on a practical level. Ms Powers-Freeling notes that a part of her role has been to communicate the cultural change in view to the staff of ULL [Powers-Freeling ¶15]. I agree with Ms Powers-Freeling’s statement that *“trust, including trust of the regulators, has to be won and it is a marathon not a sprint”*, and that securing such trust requires being open, transparent, consistent and collaborative *“day in day out”* [Powers-Freeling ¶16]. For obvious reasons, there has only been limited empirical evidence of that process thus far.

240. From TfL’s perspective, these changes must be viewed against the backdrop of ULL’s previous conduct. It will take time to repair TfL’s impression of ULL, and to enable TfL to be satisfied that it is fully capable of having the responsibility which its day to day operations require, in particular as regards safety. TfL is reluctant to assume that all the changes that are set out on paper have, in fact,

been implemented. Furthermore, I have some concerns about Ms Powers-Freeling's reliance on the 2016 data breach and the management of that breach in 2017 as evidence of ULL having achieved a "cultural shift" [Powers-Freeling ¶23]. As I set out below, ULL's response in 2017 reinforced some previous concerns within TfL in relation to ULL's control over its own data and processes. Mr Elvidge is more candid in his recognition that ULL found out about the breach far too late and did not get the right information when it needed it, nor did it have the means to obtain all the information it would ideally have had [Elvidge ¶138]. This highlights that it is right for TfL to also consider the conduct of Uber and ULL given the limited amount of control we now understand that ULL had in this matter.

### Process Change

241. Mr Jones notes that in August 2017, ULL appointed Deloitte who were "specifically engaged to conduct a root and branch review of our business governance and policy framework to identify and address areas in which ULL fell short of best practice." [Jones ¶30] Several areas were identified through that review where current processes could be improved [Jones ¶¶31-3].
242. These changes reflect ULL's commitment to developing more robust and responsible operating procedures. By way of example the Product Launch Policy described by Mr Jones in his statement [Jones ¶32(c)] and set out at [EX1/D/66], refers to the fact that the "LOMC or the relevant sub-committee of the Uber UKI entity is responsible for making a decision as to whether the regulator will be notified." The express requirement to consider notification of new products to TfL by the LOMC, chaired by a non-executive Director is an important mechanism to ensure responsibility in the operations of ULL. In the same way, the 'breach reporting policy' [EX1/D/59] codifies the approach that should be taken to regulatory breaches. However, I note it provides for a large amount of discretion to be exercised in determining whether the regulator shall be notified.
243. TfL regulates approximately 2,400 licensed PHV operators in London. In the past five years, a significant and disproportionate amount of TfL's time has been spent on dealing with regulatory issues concerning ULL. Often ULL's engagement has come only after ULL has implemented important and unannounced changes to its systems or approach. This is unacceptable, and

indeed is contrary to the Operators' Licence Regulations. The changes outlined above suggest that ULL is seeking to reverse that trend.

244. However, I still have some doubts about how well these evolved processes will work in practice. At this stage, TfL still has only (or almost only) the historic experience of ULL's behaviour to consider. Better communication and processes will be demonstrated in the future conduct of ULL, not in policies on paper. It is of some concern to TfL whether these changes will be embedded fully into ULL's business and whether trust and confidence can be placed in the commitments made. Ultimately, the degree of confidence that should be placed in ULL – in the light of its historic conduct – is a matter for the Court to consider, having heard all the evidence available.

#### **Events since the Decision: Acceptance of bookings and misleading TfL in correspondence**

245. TfL's concerns in respect of this issue arose from ULL's confrontational approach to TfL in correspondence; the 'reactive' nature of its correspondence; the false or misleading nature of some of the information it provided and its unwillingness or inability to see things from the regulator's point of view.
246. Perhaps the most important development – in this respect – is Mr Elvidge's statement itself, in which he candidly accepts that ULL's correspondence was deficient in various respects and that it was wrong (in at least certain respects). The language of his statement stands in sharp contrast to ULL's response when originally confronted with the discrepancy between its original answers in 2014 and the material that emerged subsequently (see above).
247. As Mr Elvidge explains – and as set out above – ULL has committed to being more open with TfL, and other regulators worldwide **[Elvidge ¶98]**. This reflects a significant, but overdue, shift in tone and approach. As I have already set out above, the proof of such commitments, and the extent of change to ULL's corporate culture, is yet to become clear. The Court will need to weigh ULL's statements of current intent (together with the entirety of its evidence, written and oral) alongside its historic practice (which, for the reasons set out above, has been unsatisfactory).

## Events since the Decision: Greyball

248. On 1 November 2017, ULL wrote to TfL to provide “a full and frank response” to TfL’s questions on Greyball and its use in London and the UK [EX1/B/72]. The letter acknowledged that ULL’s correspondence on the issue had not been clear enough and stated that ULL was determined to be more transparent. The letter provided further information concerning the investigation carried out by JB and offered details of Greyball tags that had been used in the UK. ULL reaffirmed that Greyball had not been used to identify or evade regulators or law enforcement in London or the rest of the UK, nor had its use for that purpose been contemplated in the UK.
249. ULL also disclosed redacted versions of the email correspondence set out above, to which Ms Bertram was a party [HC-1/B/4/365-390]. ULL said that the email trail was provided in the interests of full transparency on this matter, and confirmed that [REDACTED] were the [REDACTED] jurisdictions identified by JB as jurisdictions where Ms Bertram had accountability for operational decisions. ULL stated that, as no full investigation had been carried out in these countries, it could not say whether Greyball technology has been used in relation to regulators or not.
250. TfL wrote to ULL on 14 November 2017 with further questions concerning which of the individuals copied into the emails were employed by ULL at the relevant time and also the extent of knowledge of various senior staff within ULL - including Matthew Wilson, Andrew Byrne, Harry Porter and Florian Jensen – of the misuse of Greyball [EX1/B/74]. TfL also asked for complete copies of the relevant email chains (as opposed to merely excerpts).
251. ULL responded on 17 November 2017 and enclosed redacted versions of the full email chains [EX1/B/77] and [HC-1/B/5/391-462]. ULL said that Matthew Wilson, was aware that the wider Uber group had developed a number of techniques to address the use of the app by customers in violation of Uber’s terms of service, which may include customers who were employed by regulatory authorities, and they included banning use of the app. However, ULL says that Mr Wilson did not advise on the use of this facility and was not asked to do so. In relation to Andrew Byrne and Harry Porter, ULL confirmed that they are involved in functional support units and do not have access to the

tools to apply Greyball tags; they were copied so they could input on specific matters relevant to their area such as communications advice.

252. TfL identified inconsistencies in the redactions that had been made to the two sets of emails provided by ULL under cover of its letters of 1 and 17 November 2017. TfL therefore replied on 28 November 2017, noting that the inconsistencies in the two sets of redactions provided made it difficult to fully understand the context of the email chains, and to understand who was involved [EX1/B/86]. TfL requested full un-redacted copies of the email chains, together with an explanation of the roles and responsibilities of the senders and recipients in those emails. At this stage, TfL was interested to understand ULL's full company structure as well as how ULL fitted within the broader Uber corporate structure. TfL therefore also requested a detailed company structure chart and governance arrangements for ULL showing names, roles and responsibilities and reporting lines as well as an explanation – with structure charts as necessary - as to how ULL fits within the broader Uber corporate structure and specifically who the people are who exercise significant control over the London company within that broader Uber corporate structure (and a detailed explanation of their roles and responsibilities). TfL also asked for clarification as to whether ULL had reported the potential use of Greyball to the authorities in [REDACTED]
253. ULL wrote to TfL on 5 December 2017 explaining that the discrepancy in relation to the redactions of the email chains was a result of human error, and confirmed that all redactions had been double checked [EX1/B/89]. However, ULL did not provide full unredacted copies as requested. ULL enclosed a further set of redacted emails chains and confirmed that they showed all of the ULL recipients [EX1/B/89/458]. Although I accept that human error sometimes occurs, the errors in redactions did not give me confidence that the questions asked by TfL about relevant ULL senior management involved in these emails had been adequately answered. I was also frustrated by the need for TfL to raise this with ULL, particularly in light of its commitment to provide a full and frank response to TfL's questions on Greyball. In order to ensure that the email chains were accurate and that no other ULL senior management were involved, the emails were reviewed independently after further probing.

254. ULL also enclosed with its letter of 5 December 2017 an organisation chart for the senior management and unit leads within ULL, including names, roles and responsibilities and explained ULL's relationship with Uber BV and UTI.
255. ULL further explained that Mr Byrne and Mr Porter had stated unequivocally that they had no knowledge or understanding of the term Greyball or the full implications of its possible misuse. ULL also confirmed that neither recalled reading Ms Bertram's email of 26 November 2015 timed at 11:12:18 which is set out at [EX1/A/7/16]. ULL said that if they had done so, they did not understand it at the time. ULL also stated that Matthew Wilson was copied on one email chain as legal advisor in the context of broader legal cases concerning UberPOP and other similar products offered by competitors in [REDACTED]
256. In relation to Florian Jensen who was referred to by Ms Bertram as a person to speak to about anti-enforcement tools available to the business, ULL explain in its letter of 5 December 2017 that he was employed in the team that addressed fraud prevention in EMEA, and was legally employed by ULL until May 2016. He had working knowledge of the application of Greyball tags in his fraud prevention role and as a result had wider involvement in the use of Greyball, including the use of or contemplation of Greyball tags for the purposes of impeding or interfering with regulatory enforcement activities, in markets outside of the UK. Mr Jensen is now employed by Uber BV in Amsterdam. It is unknown whether Mr Jensen has any direct involvement in ULL's systems or processes in his role in Uber BV, which causes some concern to TfL, noting his apparent knowledge of anti-enforcement tools.
257. In relation to reports in other countries, ULL said in its letter of 5 December 2017 that the local businesses in those countries and UTI are fully aware of the findings as reported to TfL and they were actively considering what further action was appropriate and will make any reports they consider appropriate having taken advice in those jurisdictions. TfL's concerns at that time were that ULL had committed to acting transparently, honestly and with integrity and yet neither it nor UTI were taking action to make a disclosure about the potential misuse of Greyball in those countries in which it may have been used or contemplated for use. At that time, TfL concluded that ULL's response about reporting was still inadequate. In particular, TfL was concerned that ULL had

offered no assurance that the regulatory authorities in those jurisdictions would be informed of the outcome of Uber's internal investigations into Greyball and its use, despite repeated requests from TfL to do so. However, on 15 February 2018, ULL assured TfL that the police in each relevant jurisdiction were being notified [HC-1/A/17/51-52]. TfL has not yet received confirmation that this has been done and the outcome. This is important to TfL as it provides an element of assurance to TfL that ULL was "*doing the right thing*" as its Culture Submission stated it would (see above).

258. It appeared to TfL during this correspondence about Greyball that ULL may have been significantly influenced by UTI and Uber BV in relation to its decisions and operations. It was therefore difficult for TfL to have confidence in the assurances being provided by ULL in its correspondence on Greyball because it seemed that UTI and Uber BV had such a profound influence over the way in which ULL operated. TfL wrote to ULL on 21 December 2017 explaining these concerns that the issue of ULL's fitness to hold an operating licence is not confined to individuals working for that company alone when that company is under the influence or control of those outside of it [EX1/B/93A/482]. TfL requested ULL to provide the substance behind the assurances Uber has given publicly about changes as to its corporate responsibility on a global level and how that impacts on the way Uber proposes it would operate in London going forward. TfL specifically requested a clear and detailed explanation from the CEO and Board of UTI setting out the corporate governance, management and other changes in control and decision making that have or will be made not only at ULL but throughout the global structure.

259. In response, ULL sent the Culture and Governance Submission described above. The Submission explains that UTI is satisfied that oversight and responsibility for regulatory compliance in London rests with the ULL Board and that it must ensure that ULL can meet its regulatory obligations. Importantly, the Submission explains that UTI's actions which may impact the UK business will be communicated to the ULL Board in a timely manner and, in the event of a conflict between UTI and ULL, the tension must be resolved before action is taken. I note that the ULL Board will at all times have a duty to meet its licence obligations and report to its regulators should any concerns arise in this respect [EX1/B/106]. These arrangements between UTI and ULL demonstrate, on the

face of it, that ULL will be able to control its own business, and ensure that compliance with the regulatory and legislative requirements in London are of paramount importance.

260. Although TfL was aware of some of the culture and governance changes in ULL prior to the Decision Letter, TfL had little confidence that the changes proposed and that had been made at that time were genuine and that there would be an ongoing commitment to fulfil them in London. TfL could conclude no more than it did at that time that these changes were reactionary.
261. However, over the course of the past few months ULL has given more weight to these governance changes with the commitments given by its Non-Executive Chair of the ULL Board, together with the commitments given by Mr Khosrowshahi to ensure that this type of behaviour never happens again. There has been a public acknowledgement that such use of Greyball should not have happened [HC-1/B/10/485], and as a global organisation, Uber is committed to change Uber's transformation in leadership at both a global and UK level demonstrate an organisation that appears determined to change for the better.
262. One of TfL's concerns in the correspondence concerning Greyball was that ULL failed to engage with it in a truthful and transparent manner. ULL stated in its letter of 1 November 2017 that it was determined to be more transparent with TfL now and in the future. Over the past few months, ULL has repeated its commitment to transparency. In particular, I note Mr Elvidge's candid recognition that ULL did not engage with TfL as it should have done. This gives TfL the impression that ULL recognises its past failures and wants to do more to improve its reputation with TfL and ensure it is doing the right thing. Mr Elvidge is confident that the combination of these overall cultural changes, as codified in the various submissions, put ULL in a position where it can be more open and helpful in its communications with TfL and provide accurate and considered responses to questions raised [Elvidge ¶99].
263. ULL has provided assurances that that the individuals still working in London who were copied into the emails at [EX1/A/7-8] had no knowledge of Greyball, do not recall reading those communications and do not have responsibility for the licensed operations of ULL. Nonetheless, there remain some concerns on

the part of TfL to ensure that those individuals have not condoned, actively encouraged or ignored the improper use of Greyball. This is also the case for Uber BV who now employs a former ULL employee (Mr Jenson) who was referred to in the emails. As we have identified through the data breach (covered in paragraphs 277 to 301), Uber BV has access to and controls the data for ULL including customer and driver details.

### **Events since the Decision: Corporate responsibility**

264. The third 'cluster' of issues set out in the Decision Letter concerned ULL's corporate responsibility, and in particular, its seeming disregard for important elements of passenger safety. Mr Elvidge refers in his statement to a number of specific safety improvements that ULL has recently made or is planning to make in future including the development of a new dedicated telephone support line, restricting drivers' hours, real-time identification checks for drivers (subject to this being permissible in line with new data protection laws), and reviewing historic safety-related incidents to ensure that they were dealt with appropriately and have been reported to the relevant authorities [Elvidge ¶149]. All operators, including ULL should secure and enhance the safety of PHV users in London and recognises the steps ULL has taken or plans to take to rectify past mistakes. TfL considers that many of these steps should already have been in place by ULL to address public safety matters. Nonetheless, it recognises ULL's attempts to put right some of the serious public safety concerns highlighted by TfL, and to adopt measures that go above and beyond those concerns. The following sub-sections deal with the three issues set out in the Decision Letter in relation to corporate responsibility and public safety matters. Safety and criminal behaviour reporting

265. On 17 November 2017, ULL informed TfL that it had revised its policy on criminal behaviour reporting. -ULL recognised that it needed to do more in relation to reporting crime and confirmed that it was determined to go 'above and beyond' regulatory requirements to ensure serious criminal allegations are reported swiftly and routinely to the police and TfL. However, at that time, its amended policy was still based upon whether consent from the person making the report was given to enable ULL to report to the police (reports would continue to be made in the usual way to TfL) [EX1/B/79/395-399]. Therefore,

this first revised policy did not address many of TfL's previous concerns in respect of this issue.

266. Following a meeting between TfL and ULL on 10 January 2018 (see note of the meeting [HC-1/B/30/675]), a further updated policy (still dated 17 November 2017) was provided to TfL on 12 January 2018 [EX1/B/101/568-577]. This policy set out that ULL would now report all allegations that raise the suspicion that a criminal act may have been committed and will provide details of the customer, driver and the trip to the police. If the customer does not consent to reporting the incident, ULL will report to the MPS without the complainant's details. In his statement, Mr Jones says that [Jones ¶61] ULL was planning to meet the MPS, together with TfL to work out a sensible approach to implementing the policy and discuss consent in more detail. That meeting took place on 28 February 2018 at which one of my colleagues in the TPH team attended (see note of the meeting at [HC-1/B/36/715]).
267. Mr Jones says in his statement that in response to a request from TfL that was made in a meeting with TfL on 13 February [Jones ¶62], ULL is also reviewing all historic reports received by ULL in order to determine whether the correct action has been taken and conducting more extensive analysis to identify concerning patterns of behaviour. TfL wrote to ULL on 20 March 2018 to request information about this review [HC-1/A/18/53-54]. ULL responded on 26 March 2018 [HC-1/A/19/55-58] and explained that "*the review aims to raise the bar*" in ULL's approach to service safety and quality and go far beyond the standards of reporting and conduct required by regulation to set an industry-leading example. It explained that the approach to the review has been to take a fresh, self-critical view of whether past conduct, and the action ULL took in responding to complaints and law enforcement reports, is consistent with this objective. It said that ULL has focused solely on whether, in applying a new, higher standard to historic behaviour, it should now deactivate a driver's account, rather than considering whether the correct action was taken at the time or the effectiveness of any action that was taken.
268. The letter explains that ULL has undertaken a case-by-case review of any historical, serious incident that has been previously reported to ULL defined as those with police involvement, allegations of sexual incidents or touching, accidents with injuries, verbal or physical altercations with or without injuries,

physical stalking and serious dangerous driving. It has also undertaken a review of drivers where multiple complaints or allegations of lower level incidents may indicate concerning patterns of behaviour such as inappropriate comments, minor driving incidents, discriminatory comments and feedback about driving, such as harsh braking.

269. ULL explained that the review is UK-wide covering not only London and includes [REDACTED] driver accounts. As regards London ULL have completed the categorisation of all of the TfL-licensed driver accounts. 2,516 driver accounts were identified as warranting further detailed investigation: 1,148 of which fell into the case-by-case review and 1,368 fall into the lower level incident review. ULL explains that the reviews are ongoing but the position as at 22 March was as follows:

#### Case-by-case reviews:

- 1,148 reviews (100% out of the total 1,148 Category A drivers) have now been completed
- A decision has been made to permanently deactivate the accounts of 266 (23%) of the 1,148 drivers. Of those deactivated, 95 (36%) had already had their access to the app removed and were in a status ULL refer to as 'waitlisted'. This is because they were subject to an ongoing police or internal investigation. All remaining 171 driver accounts were suspended as soon as the decision was made to permanently deactivate the driver.
- Where a driver account has not been deactivated no further action will be taken by ULL at this time, however ULL say they will continue to monitor driver conduct to maintain high safety and service standards.

#### Lower level incident review

- 450 reviews (33% of the total 1,368 cases) have been completed.
- A decision has been made to permanently deactivate the account of 48 (11%) of the 450 driver accounts reviewed so far. ULL say that all of these drivers' access to the App was suspended as soon as the decision was made to permanently deactivate the account.

270. As agreed at the meeting with the MPS on 28 February 2018, ULL will be discussing cases where reports arising out of the review need to be made to the police at a meeting on 3 April 2018. ULL expects to complete the review by mid-April 2018 when it will provide an update to TfL on this review.
271. TfL takes seriously ULL's evidence that it is working closely with the police to ensure that it obtains the correct information about criminal offences reported to it. ULL's current policy is now consistent with the approach and conduct that TfL expects of a responsible operator. As to the review process, the results provided to date give TfL some concern that due to the lack of a robust reporting procedure previously, it has led to potentially further offences being committed.

#### Push Doctor and DBS

272. ULL stated in its document dated 17 November 2017 that it will ensure that the events concerning Push Doctor will not be repeated [EX1/B/79/387]. It confirmed that it will only pass on information to drivers that reflects TfL guidance on how to undergo medical examination, and that the recommendation to drivers to use Push Doctor has not been made for over a year. This is a helpful beginning. However, TfL needs ULL to go further than this. TfL requires an assurance that ULL will not seek to circumvent or redesign any part of the licensing process in future whether this relates to medical checks, criminal background checks, topographical or driver assessments, or any other part of the licensing process.
273. While it is clear that this should always have been the case, these commitments are important to TfL as they demonstrate that ULL will be focused on ensuring that it complies with the regulations and legislation that apply to its operations. Mr Elvidge says in his statement [Elvidge ¶199] that ULL needs to be much better at identifying changes in approach that may be of interest or concern to TfL and to communicate better and earlier with TfL. Whilst TfL encourages ULL to take this approach, TfL would have liked to have seen Mr Elvidge reflect the commitments made in the Submission to TfL dated 17 November that it would not circumvent or interfere with the regulatory regime in any respect.

274. The specific risk of this precise incident recurring is minimal. However, the Court will need to decide whether ULL's changes to its corporate culture and strategy are sufficient to ensure that an incident of this kind will not recur. It will also need to decide whether ULL's historic conduct is sufficiently flawed to warrant a finding that it is not now a fit and proper person.

#### Other safety initiatives

275. Although not directly related to the three issues that TfL raised in the Decision, there are a number of safety initiatives that Mr Elvidge refers to in his statement **[Elvidge ¶149]** which go some way to reflect ULL's changed approach to corporate responsibilities. ULL has announced or implemented a number of other passenger safety initiatives recently. TfL considers that they add to the impression Mr Elvidge gives of an organisation (both Uber and ULL) that now more rightly, has focus on safety and responsibility. These changes include **[EX1/B/101/568-574]**:

- a) Uber global is recruiting new safety leaders throughout the business, including a Head of Safety for the UK as a primary point of contact for the licensing team within TfL, the Metropolitan Police and safety charities.
- b) In November 2017, Uber global announced its company-wide commitment to help end sexual assault and domestic violence, and ensure a safer environment for its passengers, driver-partners, and employees.
- c) Uber global hosted listening sessions with over 80 anti-sexual assault and domestic violence groups in over ten cities worldwide, including London.
- d) ULL's senior leadership team have participated in sexual assault empathy training.
- e) Incident response agents in Limerick, who handle safety complaints from UK users, will undergo specialised sexual assault empathy training in early 2018.
- f) ULL has introduced opportunities for employees to learn and engage more with external experts on safety issues including sexual harassment and assault.
- g) ULL using telematics information in smartphones to inform safe driving behaviour.

- h) ULL will ensure that drivers are blocked from being able to do anything in the app if the vehicle is moving.

TfL considers that these changes – alongside that within ULL – are a useful indication that the focus of the business has now rightly, albeit belatedly, shifted towards public safety.

### **PART THREE – OTHER EVENTS SINCE THE DECISION**

276. I also wish to draw to the Court's attention to four further matters that have arisen or materially changed, since the Decision in September 2017. I set out below whether and to what extent I consider that these matters are relevant to the question whether ULL is fit and proper to hold a PHV Operator's licence in London.

#### **Data breach**

277. On 20 November 2017, ULL contacted TfL to inform them that its systems had suffered a data breach in 2016. At that time, ULL informed TfL that it understood that only one driver in the UK was affected. I understand that ULL did not provide TfL with any indication at that time that there would be any public statements issued by Mr Khosrowshahi, or that there was an internal investigation being undertaken by UTI.

278. On 21 November 2017, at the end of the meeting in relation to ULL's operating model, ULL made a brief reference to the data breach and said it would keep TfL informed about this matter. Mr Elvidge suggests that and Mr Byrne discussed the data breach at that meeting; I do not recall this issue being discussed in any detail other than these limited terms **[Elvidge ¶140]**. The notes of that meeting do not reflect any discussion of the data breach **[HC-1/B/17/499]**.

279. Late on the evening of 21 November 2017, TfL became aware of a Bloomberg article reporting that hackers had stolen the data of 57 million Uber customers and drivers. The article said that the breach was concealed at the time and that UTI paid a \$100,000 'ransom' to the hackers. The article referred to comments made by Mr Khosrowshahi in a public statement on the matter **[HC-1/B/18/501-506]**.

280. At 09.40am on 22 November 2017, ULL emailed TfL. The email began, “*You will have heard the news about the security breach of Uber user data.*” [EX1/B/80]. It explained that in late 2016 Uber became aware that two individuals outside the company had inappropriately accessed user data stored on a third-party cloud-based service. The compromised data included the names and a driver’s license numbers of around 600,000 drivers in the US and the personal information of 57 million Uber users around the world, including names, email addresses and mobile phone numbers. It said that it had also found evidence that one London driver’s licence number was compromised. It explained the steps being taken to secure the data and to strengthen its controls on cloud-based storage accounts.
281. I called Mr Elvidge on 22 November 2017 and requested urgent clarification about whether London and UK customers had been impacted. Mr Elvidge advised that the data security team was working through the details but that it was possible ‘some’ UK customer accounts had been breached, but ULL could not confirm the numbers involved. During the telephone call, I explained to Mr Elvidge both the seriousness of this breach itself and also my concern that TfL had not been made aware of the incident for over a year [HC-1/B/19/507]. TfL wrote formally to ULL, to this effect, the same day [EX1/B/81].
282. At 17.02 on 22 November 2017, Mr Elvidge confirmed by email that there were 2,693,883 customer accounts with a UK country code (both customer and driver accounts) included in the downloaded files [EX1/B/80]. He explained that Uber had retained Mandiant, a top cybersecurity firm, to carry out a thorough forensic analysis of the data involved, and confirmed that Mandiant had not seen any indication that sensitive data was included, such as trip location history, credit card numbers, bank account numbers, social security numbers or dates of birth. Mr Elvidge said that the information was not therefore sensitive and unlikely to have adverse consequences for the privacy of the data subjects.
283. On 22 November 2017, the *Daily Telegraph* reported that the National Cyber Security Centre (“**NCSC**”) had begun an investigation into the cover-up of the data breach [HC-1/B/20/509-512]. The NCSC’s website issued an official statement which says that “*Companies should always report any cyber attacks to the NCSC immediately*” and “*We are working closely with other agencies including the NCA [National Crime Agency] and ICO [Information*

*Commissioner's Office] to investigate how this breach has affected people in the UK and advise on appropriate mitigation measures." [HC-1/B/21/513-514].*

284. The ICO also began an inquiry and on 22 November 2017 at 10am, the ICO's Deputy Commissioner made a statement which contained the following comments [HC-1/B/22/516-518]:

"Uber's announcement about a concealed data breach last October raises huge concerns around its data protection policies and ethics."

"If UK citizens were affected then we should have been notified so that we could assess and verify the impact on people whose data was exposed."

"Deliberately concealing breaches from regulators and citizens could attract higher fines for companies."

285. The ICO's Deputy Commissioner made a further statement later on the same day confirming that UK citizens had been affected by the data breach and that it was in contact with Uber to establish the numbers and what kind of personal data may have been compromised. An update was given by the ICO's Deputy Commissioner on 29 November 2017 which confirmed that the data breach affected approximately 2.7 million user accounts in the UK. It also stated that compromised data was not of a nature that posed a direct threat to "citizens". The Deputy Commissioner also said that the ICO expect Uber to alert all those affected in the UK as soon as possible [HC-1/B/22/515].

286. On 23 November 2017, I sent an email to Mr Elvidge explaining that the data breach and Uber's actions were extremely concerning and that TfL was considering its position in light of the new information [EX1/B/82/418]. I asked for a full response to TfL's letter of 22 November 2017 given the seriousness of the data breach and the volume of UK customers and drivers affected. I also requested a response by return of the immediate steps being taken by ULL, such as plans to inform drivers and UK customers that may have been affected and confirmation that contact had been made with the ICO.

287. Mr Elvidge responded that evening confirming that ULL recognised the seriousness of this issue and was preparing a full response to my letter [EX1/B/82/417]. He also confirmed that ULL was speaking to the ICO about the data breach, and that he would keep TfL updated. Mr Elvidge also

confirmed that it had contacted the driver affected to explain and offer credit monitoring and fraud support services.

288. However, in relation to the remaining users of affected accounts, Mr Elvidge reiterated that, as the nature of the customer data was not sensitive information that would cause concerns in the same way as trip location history, credit card numbers or bank account numbers, ULL did not plan to send additional individual communication beyond the original posting. It would follow up with individual requests should any be received. He also said that there was no evidence of fraud or misuse connected to the incident but ULL was monitoring affected accounts and had flagged them for additional fraud protection.
289. I consider that this response was not satisfactory. While I recognise that some data is more sensitive than others, the names, email addresses and phone numbers of ULL's customers are important private data. I was concerned that ULL had not reported the breach for such a long time. It also seemed to me that it had failed to grasp the seriousness of the situation by not planning to make any kind of announcement to its customers who were affected by the data breach. This struck me as insufficient and unsatisfactory and raised the prospect that ULL might be seeking to protect its own reputation above securing the best interests of its customers.
290. Further news articles published on 23 November 2017 noted that SoftBank, which was a potential investor in Uber global at the time, was notified of the data breach prior to disclosure to regulators and its customers. Uber was quoted as saying "*We informed SoftBank that we were investigating a data breach, consistent with our duty to disclose to a potential investor, even though our information at the time was preliminary and incomplete.*" **[HC-1/B/23/519-521]**
291. ULL wrote a letter to TfL on 24 November 2017 with its response to TfL's questions **[EX1/B/84]**. Mr Elvidge said that he was sorry that ULL was unable to give TfL any more information beyond the telephone call prior to the public statement being made. He explained that Uber BV is the data controller for all non-US driver and rider data and it informed and formally notified the Dutch Data Protection Agency of the breach on 21 November 2017. He also affirmed that ULL was cooperating with the ICO. Mr Elvidge confirmed that the breach

was not reported to authorities at the time of the incident and that a payment was made to individuals who downloaded the data. He clarified that no members of ULL's previous or current senior management were aware of the breach at the time of its correspondence with TfL in July 2017. For obvious reasons, this gave TfL further cause for concern: I was alarmed to discover that the data of millions of UK customers could be lost by one company within the Uber family, but that ULL might never know of the breach.

292. Mr Elvidge also explained that the forensic analysis of the data lost had only been broken down at a country level. As a result, ULL did not have information about London drivers and customers specifically. This caused TfL further concern. ULL collects and holds vast amounts of personal data about its drivers and customers; it struck me as unacceptable (and surprising) that it could not say which of its customers had lost their data.
293. On 27 November 2017, Mr Elvidge telephoned me and apologised for the lack of information given to TfL regarding the data breach **[HC-1/B/24/523]**. I told Mr Elvidge that TfL was extremely disappointed about the way this had been handled and said that given the seriousness, TfL would be following up in writing.
294. TfL wrote a further letter to ULL on 28 November 2017 with a series of questions about the circumstances in which ULL had control of its customer's data, and which senior management in Uber BV and UTI knew of the data breach **[EX1/B/85]**.
295. On 29 November 2017, Mr Elvidge telephoned me to say that ULL would update its web page regarding the data breach, explaining that approximately 2.7 million UK customers have been affected and providing a link to NCSC guidance about what to do if someone thinks they have been affected **[HC-1/B/25/525]**. Mr Elvidge confirmed that it would be unlikely to contact affected customers directly because of the type of data that had been breached.
296. On 5 December 2017, ULL responded to TfL's letter of 28 November 2017 **[EX1/B/88]**. ULL explained that it still did not have a full set of facts concerning the individual users affected but that it would keep TfL informed as its investigations progressed. ULL confirmed that Mr Khosrowshahi was informed

in mid-September 2017 that there had been some kind of data incident involving a payment, and had ordered a thorough investigation into the matter.

297. ULL explained in its letter of 5 December 2017 that it had publicly released further information identifying the number of people affected by the breach in the UK but due to the nature of the data involved, did not plan to take any other action. It said it was continuing to cooperate with the ICO.

298. TfL has not received any further updates on the investigation carried out by Mandiant since the letter of 5 December 2017. In its document titled "*Uber Submission to Transport for London: Culture and Governance*" dated 11 January 2018 updated on 30 January 2018 [EX1/B/106], ULL confirmed the following:

- (a) Uber global's CEO was informed in mid-September 2017 that there had been a data incident involving a payment but received only limited details regarding the incident. He instigated an immediate investigation to determine what had happened and what action, if any, was appropriate.
- (b) When the forensic investigation was completed and relevant people at UTI believed they had sufficient facts, they quickly notified regulators and the public.
- (c) Uber removed the Chief Security Officer and a company lawyer who were involved in the initial discovery of the data breach from the business
- (d) Uber's CEO made a global communication to all employees making clear that he will not tolerate misconduct or misbehaviour that was endorsed or excused in the past.
- (e) Uber's Chief Legal Officer has been given explicit responsibility to ensure that Uber's customers and drivers' data is held securely and that any future cyber attacks are handled properly.
- (f) Uber is working with information regulators around the world, including the UK ICO, and has launched a forensic review to provide technical assurance of the company's information security.

(g) Changes are being made to ULL and Uber global's corporate governance (see above). The following improvements to security and data privacy across Uber global had been made since the data breach have occurred:

- (1) Introducing risk-based multi-factor authentication for riders and drivers (so that if Uber detects a suspicious login it will ask for a second authentication, such as SMS);
- (2) Developing machine learning models and pattern detection to identify fake accounts created with stolen credit cards. In some cases, Uber can proactively refund riders when fraudulent activity is detected;
- (3) Employing a specialised team of fraud investigators who actively monitor online forums where scammers advertise their services;
- (4) Updating the privacy policy with consumer-friendly language and introducing self-service account deletion, which came into force on 1 November 2017 - <https://privacy.uber.com/policy/>
- (5) Introducing an improved triage and alert systems for incident responses.

299. I note that the information provided in Mr Elvidge's statement **[Elvidge ¶130]** seems to be new and was not given to TfL in November and December 2017 in response to TfL's questions. ULL had not explained in that correspondence that the people who had accessed the data had obtained the login credentials on a private Uber repository on "GitHub" or that the payment was made through HackerOne ([www.hackerone.com](http://www.hackerone.com)) which UTI uses for its "bug bounty" program. ULL had also not explained the use of GitHub systems and that all access codes were moved to internal systems, reducing the need to use external private repository systems such as GitHub. TfL is unaware of the GitHub system or its use in ULL, and whether the use contributed to the data breach itself.

300. TfL recognises that companies may face data breaches from time to time and therefore, depending on the individual circumstances, in and of itself this may not be relevant to ULL's fitness and propriety to hold a PHV operators licence. However, I consider that the following facts are relevant to this appeal:

- (a) The Uber data breach was very large, and affected 2.7 million UK customers.
  - (b) ULL appeared to have no control over the systems on which its customer data are stored. It is not clear to what extent ULL could – if it wanted to – hold Uber BV or UTI to account in respect of those systems.
  - (c) ULL’s officials have said they were not aware of the data breach for well over a year. This raises serious concerns for TfL, because it suggests that ULL was not truly in ‘control’ of the data of its own customers.
  - (d) ULL officials appeared to have little or no role in or control over the investigation once the breach was publicised. ULL explained in its letter of 5 December 2017 that the investigation was very sensitive and was being coordinated on a global level and tightly controlled even within UTI. I can understand that approach to some degree. However, it gives little comfort to a regulator in TfL’s position that ULL is truly in control of its users’ data.
  - (e) The response of UTI, including the failure to report the incident and the payment to the hackers, was not consistent with ULL’s claims that Uber is a transparent, company (albeit I recognise that the incident occurred before Uber’s recent change of corporate leadership and culture).
  - (f) TfL first became aware of the incident in November 2017, at a point in time when ULL had made commitments that it was attempting to reform its corporate culture and ethos. The new CEO of Uber met with TfL’s Commissioner in October and was aware of the data breach at that time but did not raise it. While I recognise that the data breach itself occurred in 2016, prior to these reforms, the response at the time of the data breach – to pay the hackers – is astounding and gives cause for serious concern. Mr Elvidge points to the new Compliance Protocol as a mechanism for ensuring that any future data breaches will be notified to ULL as soon as possible and with “*as much information as is feasible*” made available [Elvidge ¶148]. However, the limited information available in November 2017 suggests that this undertaking may be of only limited value.
301. Ultimately, the data breach is relevant to the fitness and propriety of ULL in respect of:

- (a) The historic conduct of ULL and other companies in the Uber group. The Court will need to decide whether – even in the light of the recent reforms – ULL is a fit and proper person to hold a licence;
- (b) The response of ULL in 2017 and, in particular, its apparent lack of control over its own data and an investigation into the loss of its customers' information.

## Ripley

302. During the various discussions that have taken place between ULL and TfL since the Decision in September 2017, TfL has sought full disclosure from ULL as to any other issues of current or historic concern about ULL or Uber global and its business practices that may have implications for its fitness and propriety, and its reputation with TfL and the public. For example and in light of the Greyball system coming to light, I recall asking ULL in several meetings that I have attended with ULL to clarify to what extent other systems may exist within Uber that may have been used to evade regulatory measures. No such information was forthcoming from ULL until early January 2018 when, a few hours ahead of information being reported in the media, TfL learned of a system being used to evade regulation by Uber called 'Ripley'.
303. Bloomberg published a news article on 11 January 2018 regarding Uber's conduct when unexpected visits were made to its offices by government authorities in 2015-2016 [HC-1/B/26/527-531]. 'Ripley' was the internal name given to one of the security tools that was available at this time, which enabled remote log out of devices from Uber's system to prevent improper access of private user data through that device. Although the system has a legitimate use to protect Uber's data in the event of a lost device, the system was being used to remotely lock devices during unexpected visits by government departments in some jurisdictions.
304. In its letter dated 21 January 2018 [HC-1/A/11/36A-36J], ULL confirmed that between 2015 - 2016, the 'Ripley' software was used to remotely lock devices during unexpected visits by government departments in some jurisdictions. ULL confirmed that Ripley has never been used in such a way in the UK.
305. ULL also confirmed that Uber global's policy is to cooperate with all valid searches and requests for data by governments undertaking investigations.

Uber has a specific global policy for dealing with unexpected visitors that includes information on who to contact, how to respond, and important Dos and Don'ts. Uber has also sent a global communication to relevant employees in January 2018 advising that technical measures during these visits should never be used without express legal approval to ensure that it is current and consistent with local laws and regulations and appropriate under the specific circumstances.

306. TfL has concerns that some companies within the Uber group used such technology, albeit in the past. This course of conduct is broadly consistent with the behaviour connected to Greyball, another tool that has legitimate uses and purposes but has been used by Uber in order to avoid enforcement by regulatory authorities. TfL is also concerned that it was not given sufficient information about this issue in advance of the disclosure to the public, even though it should have been clear to ULL that TfL would have a clear interest in any systems that had been used by Uber/ULL in order to evade enforcement. Despite ULL's promises about better communication with TfL, and its commitment to act transparently, it did not do so in relation to this issue. I do not know whether ULL's answer to this point is that it was simply not aware of the misuse of this technology in other jurisdictions. In any event, this further disclosure went some way to undermining TfL's confidence in ULL's commitments to change, although (as set out above) TfL recognises that the various governance and cultural changes are new and may take time to embed.

### **Geographical changes to ULL's operating model**

307. As well as the wider discussions concerning ULL's operating model – and the booking process – ULL and TfL have also been engaged in a discussion concerning further changes to its operating model. ULL's document dated 1 December 2017 (which was updated on 12 January 2018), explained that ULL proposed to introduce a further change to its operating model that would constrain the areas in which ULL's London PHV operator's licence is used. ULL said that the licence would not be used in areas where other licenced companies within the Uber group are trading, in order to provide a clear separation between licensed operations. Mr Elvidge explains in his evidence [Elvidge ¶210], that these changes were offered by ULL to resolve TfL's

concern that the booking process at Heathrow (for example) means it is not clear that ULL is accepting bookings for the purposes of the 1998 Act. Further information about compliance of ULL's operating model with section 2 of the 1998 Act is in Part Four.

308. Currently, it is lawful for PHVs to carry out bookings anywhere in England and Wales, provided:

- The vehicle, driver and operator are licensed by the same licensing authority
- The booking is accepted by the operator within this authority, regardless of where the driver and vehicle are physically located

309. This enables drivers who are licensed by TfL to operate largely or exclusively in cities outside London such as Leeds, Manchester and Birmingham. I refer to this business model as cross-border hiring. This has caused significant issues for TfL and other licensing authorities in respect of enforcement, congestion, emissions and parking. TfL cannot carry out the enforcement of TfL licensed drivers or vehicles if they are physically located outside London, and the local licensing authorities in those areas do not have any licensing powers against TfL licensed drivers. TfL, in common with other licensing authorities in the UK, considers that national change is required to address the difficulties presented by cross-border hiring, which will otherwise further contribute to problems with enforcement, congestion, pollution and parking.

310. ULL confirmed in its letter of 14 July 2017 that in the past 12 months, 10% of the bookings accepted by ULL started outside of Greater London, 11% finished outside of Greater London and 9% started and finished outside Greater London **[EX1/B/41/163]**. It also confirmed that in the last 12 months, 1% of drivers carrying out bookings made with ULL have undertaken bookings wholly outside Greater London, and 2% of drivers carrying out bookings made with ULL have carried out 75% or more bookings outside Greater London. TfL has previously explained its concerns to ULL about the number of ULL drivers who operate exclusively outside of London.

311. At a meeting between ULL and TfL on 23 January 2017 **[HC-1/B/33/681]**, ULL explained that changes were being made to the geographic boundary it had

originally proposed, beyond which ULL and London licensed drivers could not operate. ULL and said that ULL drivers and vehicles would be able to operate in certain key transport hubs outside of the Greater London boundary. TfL requested further information about this new geographic boundary.

312. On 24 January 2018, TfL wrote to ULL seeking information on this question [HC-1/A/12/37-38]. On the same day, ULL wrote to TfL to explain the extent of the areas beyond Greater London where it intended to continue to operate [HC-1/A/13/39-44]. ULL provided maps setting out the ULL geographic border which was based on data and detailed analysis of what was the most practical for the vast majority of people travelling in and around Greater London taking into account the regulatory requirements and understanding of TfL's concerns about cross-border hiring.
313. On 9 February 2018, TfL wrote in reply [HC-1/A/15/47-48]. TfL welcomed ULL's commitment to go above and beyond the regulatory requirement, by confining itself to trading within London, and that these were based on feedback from TfL as well as other licensing authorities as to the impact of cross-border hiring. However, as the boundary proposed by ULL was much broader than Greater London licensing boundary for which TfL is responsible, TfL stated that it did not consider that the proposals addressed the concerns that TfL and other licensing authorities have raised about cross-border hiring. TfL requested that ULL consider TfL's concerns and consider restricting the ULL geographical boundary to ensure it is consistent with the Greater London licensing boundary.
314. ULL sent a reply by email on 12 February 2017 stating that it would not be altering its geographical boundary further [HC-1/A/16/49-50].
315. ULL subsequently confirmed verbally that it had reconsidered the geographic boundary of its operations, and decided to remove Reading. It also explained that it was speaking with several other licensing authorities and proposed to make changes to ULL and Uber Britannia Limited's (UBL) geographic boundaries over the coming months to ensure that they operated in the relevant licensed areas.
316. The information initially given by ULL in December 2017 about limiting the areas where ULL would operate gave TfL the impression that ULL would no

longer allow cross-border hiring and that its geographical boundary would be consistent with TfL's licensing boundary. However, the correspondence in late January 2018 made it clear that ULL's licence would continue to be used in areas outside London. TfL does not consider that ULL was open or clear in its communications with TfL about cross-border hiring. Although ULL has said that it will work with TfL collaboratively and be transparent, and act with honesty and integrity, ULL's approach to this issue suggests to TfL that it remains difficult to obtain all of the information necessary in order to understand the proposals being suggested by ULL. Again, this does not give TfL confidence in ULL's commitments to change, although TfL notes that the various governance and cultural changes are new and may take time to embed.

### **Driver hours**

317. TfL also has some concerns about the manner in which ULL has introduced a cap on driver's hours. During several meetings held with ULL between November and January 2018 that I attended, ULL explained that it was seeking to introduce a cap on driver's hours. In the course of those conversations, TfL understood that the cap would apply to the amount of time that a driver was logged into the Driver App and available for hire, and would therefore include time that the driver was driving around waiting for bookings as well as the time spent on bookings. However, it became clear to TfL shortly before ULL's announcement about the cap, that the number of hours is calculated by reference to driving hours only.
318. In fairness to ULL, this distinction had been set out in the written documentation provided to TfL in November 2017. However, it was not discussed in any detail with TfL during the various meetings that I attended and at which this point was raised. Had ULL flagged this point with TfL that would have highlighted the fact that the cap was only concerned with driver hours. TfL was disappointed that the discussions that had taken place with ULL about this important mechanism to improve safety were not sufficiently clear to enable it to fully understand the proposal being suggested. The true position could have been ascertained from a close reading of the underlying documents. However, it came as a surprise to TfL, including to those who had discussed this point with ULL on more than one occasion. Again, I acknowledge that at this time, the cultural and governance

changes proposed by ULL were relatively new and they may take time to embed but it gives a level of doubt as to whether these changes will be fully embraced by ULL.

#### **PART FOUR – UPDATE ON OPERATING MODEL**

319. This part of my statement sets out the chronology and discussions between the parties concerning ULL's operating model.

320. On 22 September 2017, TfL wrote to ULL about its operating model [EX1/B/63]. As TfL explained, it was minded to conclude that ULL's business model does not comply with section 2 of the 1998 Act. TfL was not satisfied that ULL was accepting bookings at its licensed operating premises in London because:

- (a) ULL does not accept bookings before assigning them to a driver - the booking is accepted by the driver and the operating system then relays the acceptance back to the customer
- (b) In common sense terms, it is the driver, not ULL, which accepts the booking;
- (c) Drivers can cancel bookings, with that cancellation then being automatically processed by ULL;
- (d) A driver's decision to accept or reject a booking at Heathrow brings the booking within ULL's sphere (or otherwise) for the first time; and
- (e) ULL's staffs play only a limited role in configuring and managing the booking process.

321. On 20 October 2017, ULL wrote to TfL setting out its understanding of the legal analysis of its operating model and to confirm that - based on its interpretation of the legislation - ULL accepts bookings and makes provisions for the invitation and acceptance of bookings [EX1/B/68]. ULL also stated that in the spirit of moving forward, it had been reflecting on and actively investigating what could be done to ensure that the way the model operates is best aligned with the consumer and regulatory interests reflected in the legislation.

322. ULL wrote a second letter to TfL on 20 October 2017 which was marked “without prejudice” [HC-1/A/10/35-36]. However, on a review of that letter, I do not consider it is truly without prejudice and I am informed that I can refer to it in this witness statement. ULL explained that regardless of the perceived legal merits of its position, it would be prudent to identify possible ways in which ULL could improve transparency and demonstrate even more fully that it is accepting bookings. ULL explained the changes it proposed to make to reconfigure the Uber app and/or change its current processes which included:

- (a) Making changes to the information displayed in app to passengers in London to make clearer the role of ULL in accepting bookings;
- (b) Making process changes to clarify the role of rider, driver and ULL to show more clearly that drivers are unable to cancel a rider's booking request ;
- (c) Making enhancements to the monitoring of bookings in our licensed operating centre;
- (d) Making changes to the dispatch process in London, including at Heathrow.

323. ULL sought a discussion with TfL concerning these proposals and to understand TfL's concerns about ULL's booking process. A meeting took place between TfL and ULL on 2 November 2017 to discuss TfL's concerns about ULL's operating model and also the changes which ULL were proposing [HC1/x/y].

324. On 21 November 2017, a further meeting took place between TfL and ULL at which ULL [HC-1/B/17/499] discussed its initial proposals to engineer changes to its booking process to make clear in its app at what point a booking is accepted. ULL confirmed that it would provide further information on its proposals, including the impact on customers and drivers at each stage of the booking process.

325. On 1 December 2017, ULL sent a document to TfL setting out the changes it proposed to make to its operating model which it said sought to address the questions raised by TfL [EX1/B/87]. These changes included:

- (a) Technical changes to the bookings process so that ULL communicates to the customer that it has accepted the booking and is searching for a driver, before drivers are contacted to ascertain their availability; and
- (b) Technical changes to the cancellation process to ensure that ULL has control over when bookings are cancelled and vehicles are reallocated to the booking;

326. On 21 December 2017, TfL wrote to ULL stating that the changes proposed by ULL could mean that bookings are accepted in accordance with the legislation, subject to a technical review being carried out by Deloitte UK to establish that the changes described in the letter had been made [EX1/B/93]. TfL also asked for clarification as to what "responsibility" ULL considers it has in both (a) a contractual, and (b) a non-contractual sense to its customers for their booking under the proposed changes and requested a copy of the proposed amended driver and passenger terms and conditions to reflect the proposed changes [HC1 xc].

327. ULL wrote back on 5 January 2018 and confirmed the technical changes that would be made to booking and cancellation of bookings [EX1/B/96]. It also confirmed that in future, ULL's London PHV operator's licence will not be used in areas where other licences are also used to create a clear separation between ULL and UBL licensed operations. It stated that changes would need to be made to the passenger and driver apps so that TfL-licensed drivers will not be offered trips in cities beyond Greater London. Attached to the letter were the amended terms and conditions.

328. TfL and ULL met to discuss ULL's progress with changes to the app on 9 January 2018 [HC-1/B/29/673]. ULL followed up that meeting with an updated submission setting out the changes it would make [EX1/B/99].

329. Deloitte UK visited ULL on between 17 January and 2 February 2017 and provided its final report to TfL on 6 February 2018 [HC-1/B/34/683-711]. The review confirmed that the technical changes described in ULL's updated submission had been made to the system, although these changes had not at that stage been made live. ULL confirmed that the changes would be live in the driver and customer apps on 14 March 2018. TfL therefore arranged for Deloitte UK to visit ULL again and review the live changes to the system which

I refer to in more detail below. The review showed that the system would now work in the following way:

- (a) A request is made by a rider using the Rider App. The system searches available drivers who are online, eligible and meet certain criteria such as estimated time of arrival (ETA). The system decides whether there are appropriate drivers to fulfil the request and notifies the rider of the ETA to pick up.
- (b) The system checks whether surge pricing is valid at the pick-up point, calculates the trip fare estimate and the ETA and this is displayed on the Rider App.
- (c) The rider confirms the request and ULL accepts the booking automatically and the rider is notified that ULL has accepted the booking. At this stage, the booking record is stored in the ULL database which includes:
  - Time booking received and time booking allocated
  - Rider name and telephone number
  - Full pick-up and destination address
  - All trip state timestamps and locations

The system chooses the most appropriate driver based upon locally configured rules. The driver has 15 seconds to confirm availability for the trip by tapping their device.

- (d) When the driver confirms availability for the trip, ULL provides details of the booking to the rider and driver and the booking record is updated. The system provides the rider with the relevant details of the driver name, photo, rating, ETA. The system provides the driver with directions to pick-up point, the name of the rider and anonymised contact details. When the driver enters the arrival radius for the trip which is set by ULL, the system notifies the rider that the driver has arrived and the system displays the "Start trip" button and starts a timer on the driver app.

- (e) If the rider reaches the driver within the elapsed time, the driver confirms the rider's identification by name or by requesting sight of the Rider App showing the booking, clicks "Start trip" and receives the destination and navigation details.
- (f) If the rider does not reach the driver within the elapsed time, ULL automatically cancels the booking. The booking details are updated in the ULL database, to include the cancellation details. The system decides whether to charge and notifies the rider if it is to be applied. A notification is sent to the rider's app confirming the cancellation and the rider can request a new booking. A notification is sent to the driver's app confirming the cancellation and the driver returns to an online state in the app and is available to receive requests from ULL.

330. TfL wrote to ULL concerning how the changes to the operating model would affect the Schedule a Ride and UberPOOL functions on 29 January 2018 [**HC-1/A/14/45-46**].

331. ULL's new operating model went live on 14 March 2018. Deloitte UK reviewed the changes in the live system on 15 March 2018 and provided an addendum to its report on 19 March 2018 [**HC-1/B/39/883-909**]. The addendum confirmed that Deloitte had observed the live system and undertook process timestamps so as to demonstrate that the changes discussed with TfL had been implemented and were live in the system. Deloitte observed the following scenarios, using a live Rider App and either a live TfL licensed driver using the Driver App or one of the ULL team's Driver App ("**ULL Driver app**"):

- Booking acceptance
- Driver unable to fulfil request
- ULL auto-cancellation
- Rider cancellation
- Pool cancellation
- Scheduled ride

332. In relation to booking acceptance, Deloitte observed that when “CONFIRM PICKUP” was pressed in the Rider App, a notification appeared at the bottom of the screen with the following text:

*“Uber London has accepted your booking. Finding your driver”*

333. Deloitte observed that the system identified the driver and shortly thereafter a notification was received in the Rider App to confirm that a driver had been allocated.

334. The process timestamp illustrates this process and shows a clear distinction between each step described above.

335. The new cancellation process was also observed by Deloitte where the driver was unable to fulfil the request. It observed the sequence described above for the booking. When the driver is unable to fulfil the request, the “cancel” option was chosen on the Driver App. At this point the Rider App reverted to the search screen displaying the following notification: “Uber London has accepted your booking. Finding your driver” followed by the notification “Connecting you to nearby drivers”. There was no customer interaction and shortly after, a new driver was identified and the process reverted to the normal flow.

336. Deloitte also observed the ULL auto-cancellation function, whereby the booking is cancelled if the customer does not meet the driver within 8 minutes after the driver had arrived to pick up the passenger. After 8 minutes, the system automatically cancels the booking, displaying the following message to the customer:

“Booking cancelled

Uber London has cancelled your booking because you didn't meet your driver within 8 minutes”

337. When the customer tapped “OK” on the app, it reverted to the home screen where a customer can make a new booking.

338. The process timestamp illustrates this process and shows a clear distinction between each step described above. In relation to UberPool cancellations, following acceptance of the booking by ULL, a driver was allocated. If the customer does not meet the driver within 3 minutes after the driver arrived, the

booking was cancelled by ULL and the Rider's App displays the following notification:

"Booking cancelled  
Uber London has cancelled your booking because you didn't meet your driver within 3 minutes"

339. In relation to Scheduled ride, the Rider App was used at 10:47 to schedule a ride for 10:55. "*SET PICKUP TIME*" was pressed and a location was selected. On selecting the location, the screen displayed a message confirming "*Your ride has been scheduled!*", accompanied by the following details:

- Destination
- Date and time
- Cost estimate
- Message as follows:
- "Actual estimate to be provided prior to pickup.
- Your booking is only confirmed once you receive your ride details and updated fare estimate. If no car is available, we'll let you know at the end of your pickup window. See here for terms."

340. The "*Scheduled ride*" process invokes the standard booking process at a pre-set time, based upon the passenger's choice.

341. TfL considers that, following the changes, ULL's operating model complies with the legislative framework. The changes clearly set out that the bookings are accepted by ULL before they are allocated to a driver and the cancellation process is controlled by ULL with no driver interaction other than to notify ULL that the driver cannot fulfil the booking.

342. TfL considers that ULL adopted a constructive approach to this issue: it listened to TfL and made appropriate changes (without the need for extensive dispute or litigation). TfL accepts that there was room for doubt concerning whether ULL's model was already compliant (though it was minded to find the contrary). In the circumstances

343. TfL considers that the false information ULL historically provided to TfL is relevant to ULL's fitness and propriety to hold a PHV operator's licence.

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true.

Signed:

Date: 29 March 2018



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Name: Helen Kay Chapman

