

IN THE MAGISTRATES' COURT SITTING AT WESTMINSTER

**IN THE MATTER OF AN APPEAL UNDER THE PRIVATE HIRE VEHICLES
(LONDON) ACT 1998**

BEFORE THE SENIOR DISTRICT JUDGE (CHIEF MAGISTRATE)

B E T W E E N:

UBER LONDON LIMITED

Appellant

-and-

TRANSPORT FOR LONDON

Respondent

SKELETON ARGUMENT OF TRANSPORT FOR LONDON

For the hearing of the appeal

List of recommended pre-reading (time estimate 1 day)

- Skeleton arguments **[CB/1; 2]**
- Submissions of LTDA and Appellant's response **[LTDA/1; 2]**
- Decision letter **[CB/3]**
- Revised list of issues **[CB/6]**
- List of agreed and non-agreed conditions **[CB/7]**
- Appellant's witness evidence: Elvidge 1, 3 and 4 **[CB/14, 18, 21]**; Jones 1 and 2 **[CB/15; 19]**; Powers-Freeling 1 and 2 **[CB/16; 20]**.
- Respondent's witness evidence: Chapman 1 and 3 **[CB/17, 22]**.

References in this skeleton argument are in the form [CB/x/y/§z] where CB refers to the Core Bundle, x refers to the tab number, y refers to the page number and z refers to the paragraph number in the relevant document.

INTRODUCTION

1. This is an appeal brought by Uber London Limited (“**ULL**”) against the decision of Transport for London (“**TfL**”) not to renew ULL’s licence, notified to ULL on 22 September 2017.
2. TfL was established by s. 154 of the Greater London Authority Act 1999 (“**GLAA**”). Its functions include licensing private hire operators, drivers and vehicles in London, pursuant to the Private Hire Vehicles (London) Act 1998 (“**the 1998 Act**”). Uber London Limited (“**ULL**”) is a private hire operator; it has operated in London since 2012.
3. This appeal is brought pursuant to s. 3(7)(a) and 25(3) of the 1998 Act.¹ It involves a *de novo* redetermination of ULL’s licence application.² The Court must determine whether TfL’s decision not to renew ULL’s licence is wrong, in the light of the evidence now before it:³

“What the appellate court will have to do is to be satisfied that the judgment below ‘is wrong’, that is to reach its conclusion on the basis of the evidence before it and then to conclude that the judgment below is wrong, even if it was not wrong at the time.” (emphasis added).

4. “*ULL now fully accepts that the Decision was justified*” at the time when it was made.⁴ It acknowledges that it made “*serious mistakes*” in the past and that there was insufficient evidence before TfL, in September 2017, for it to conclude that ULL was a fit and proper person to hold a PHV operator’s licence.⁵ The question for the Court is accordingly whether ULL is *now* a fit and proper person to hold a licence.
5. The evidence that is relevant to this question falls into three broad categories:
 - (a) Matters that were a cause of concern for TfL at the time of the Decision, but have now been resolved or ULL has pledged to resolve. These matters remain relevant to the question of ULL’s current fitness and propriety to hold an operator’s licence, since “*past misconduct by the licence holder will in every case*

¹ Procedurally, it is brought by way of a complaint for an order pursuant to ss. 51-53 of the Magistrates’ Court Act 1980 and Rule 34 of the Magistrates’ Court Rules 1981.

² *Rushmoor Borough Council v Michael Richards* (Tuckey J) (1996 WL 1092090).

³ *R (Hope & Glory Public House Ltd) v City of Westminster Magistrates’ Court* [2009] EWHC 1996 (Admin) (Burton J), §§42-3. The judgment and this approach was upheld on appeal.

⁴ ULL’s skeleton argument [CB1/1/§2].

⁵ CB1/1/§§2 and 5.

be a relevant consideration to take into account when considering whether to cancel a licence.”⁶

- (b) Matters of concern that have arisen since the Decision and are relevant to ULL’s fitness and propriety.
- (c) The position in relation to ULL’s operations today. This includes the changes ULL has introduced to some of its systems, leadership, governance and culture. As Ms Chapman explains: “*The very nature of such changes is that they take time to bear fruit.*”⁷ The Court will need to assess to what extent those changes have been embedded in ULL’s overall culture so as to address the concerns identified.

THE LAW

Transport for London and the Licensing Regime

- 6. Ms Chapman’s first witness statement explains TfL’s role as licensing authority for the private hire sector, and the statutory framework that governs PHV licensing in London.⁸ That is not repeated in detail here. By way of summary only:
 - (a) TfL is required by the GLAA to exercise its powers for the purpose of developing and implementing a safe, integrated and efficient transport system in London (ss. 141(1) and 154(3)). It is also obliged to implement the Mayor’s Transport Strategy. Public safety is TfL’s primary concern.⁹
 - (b) The 1998 Act establishes a three-part licensing regime for the PHV sector: the operator accepting a booking (s. 2(1) of the 1998 Act); the driver fulfilling a booking (s. 13 of the 1998 Act) and the vehicle itself (s. 7) must all be separately licensed by TfL.
 - (c) Section 3 of the 1998 Act (read together with s. 32(1)) confers on TfL the power to prescribe licence conditions for PHV operators, by way of regulations. TfL has

⁶ *R v Knightsbridge Crown Court, ex parte International Sporting Club* [1982] QB 304, 318 (Div. Ct).

⁷ **CB/17/234/§54(d)**.

⁸ **CB/17/221-228**.

⁹ **CB17/222/§9**.

exercised this power in the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, as amended ("**the Operator's Licence Regulations**").

- (d) Before it grants a licence, TfL must be satisfied that the operator is a "*fit and proper person*" to hold a licence. In *R (RBNB) v Crown Court at Warrington* [2002] 1 WLR 1954, Lord Bingham called this a:

"portmanteau expression, widely used in many contexts. It does not lend itself to semantic exegesis of paraphrase and takes its colour from the context in which it is used."

In *McCool v Rushcliffe BC* 1998 WL 1043984, Lord Bingham CJ held that a licensing authority (and an appeal court in a case of this kind) must have a good reason for determining that an applicant is not fit and proper. In reaching that conclusion it may take into account any factor that a reasonable and fair-minded decision maker might rely on. At §25 he said this:

"What will be (or may be) a good reason will vary from case to case and vary according to the context in which those words appear... it is appropriate for the local authority or justices to regard as a good reason 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."

7. TfL publishes a limited list of factors that it may take into account, as part of the consideration of an operator's licence application. That list is not exhaustive.¹⁰
8. The Court, hearing an appeal of this kind, enjoys the same powers as TfL when it receives a licence application. It may confirm, reverse or vary TfL's original decision.¹¹
9. Amongst the powers open to the Court, if it decides to grant a licence, are the statutory powers to vary the length of the operator's licence¹² and to grant the licence subject to such conditions as it sees fit.¹³ The parties have provided a list of conditions that might be imposed on ULL's licence, if the Court decides to grant one. The Court also has discretion to impose conditions that differ from those provided by the parties.

¹⁰ **CB/296/2776-7.**

¹¹ See s. 25(7) of the 1998 Act.

¹² Section 3(5) of the 1998 Act 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.*"

¹³ Section 3(4) of the 1998 Act provides that TfL shall grant a PHV operator's licence "*subject to such conditions as may be prescribed and such other conditions as the licensing authority may think fit.*"

Statutory appeals to the Magistrates' Court

10. As set out above, s. 3(7)(a) of the 1998 Act provides that an applicant for a PHV operator's licence may appeal to the magistrates' court against a decision not to grant a licence (see further s. 25). A statutory licensing appeal of this nature is a "*complaint for an order*", pursuant to rule 34 of the Magistrates' Court Rules 1981.
11. As Parker J explained in *Golding v Secretary of State for Transport* [2013] EWHC 300 (Admin), (§12), a statutory appeal of this kind is not akin to a claim for judicial review: it is a "hearing de novo", albeit the licensing authority's original reasons should be given appropriate weight: *R (Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31, [2011] PTSR 868, 45 (Toulson LJ).
12. The Court should apply the same test as applied by TfL when determining a licence application: is ULL a "*fit and proper person*" to hold a PHV Operator's licence? As to that, the following principles emerge from the authorities:
 - (a) The test is specific to the nature of the licence sought: "... *before granting a licence, justices... must think the applicant has the personal qualities and professional qualifications reasonably required of a person seeking to [provide the licensed services] for which he or she seeks a licence.*"¹⁴
 - (b) The Court must also have regard to the nature and objectives of the licensing regime under which the application was made.¹⁵
 - (c) The Court is not constrained as to the factors it may take into account, as long as those factors (and that evidence) would be relevant to a "*fair minded decision maker acting in good faith and with proper regard to the interests both of the public and the applicant.*"¹⁶
 - (d) As set out above, the historic conduct of the applicant is relevant, even in a case where that historic conduct has now been disavowed, and the appellant has restructured. In *International Sporting Club*, three London casinos had operated in breach of the relevant gaming laws. Each lost its licence. The licence holders appealed and then sold the companies to third parties in the interim. The new

¹⁴ *RBNB* §9 (Lord Bingham).

¹⁵ *McCool* §7 (Lord Bingham CJ)

¹⁶ *Ibid.* §25.

owners replaced the entire previous management with new staff. The Divisional Court held, on appeal, that (p. 317):

“On the question of whether or not the companies are fit and proper persons to hold the licence it is conceded that this question must be determined in the light of the circumstances existing at the time of the appeal. Past conduct will, of course, be relevant as we shall discuss more fully hereafter. There are, however, other considerations which should be taken into account particularly when the licence holder is a limited company; for instance, whether the shareholding or management of the company remains the same at the date of the material hearing as they were when the past misconduct occurred; the general character and reputation of the shareholders and directors of the company at the date of the hearing should be taken into account. So should any evidence that the "re-structured" licence holder has the capacity and intention to run the casino on different lines, or indeed that it may have already started to do so.”

Acceptance of bookings

13. It may assist the Court to understand the relevant statutory background in relation to acceptance of bookings in the London PHV sector. This originally formed part of the LTDA’s intervention, and it has reserved the right to make further submissions on the legal implications of the recent changes to ULL’s model.¹⁷ It also provides the backdrop to the correspondence between TfL and ULL in 2014-15 concerning the mechanisms by which ULL accepted bookings on its platform.
14. Section 2 of the 1998 Act provides that: “*No person shall in London 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.*” Breach of this provision is an offence.
15. Section 4 of the 1998 Act provides:

“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 its licence.”
16. In *Kingston upon Hill City Council v Wilson* (The Times, July 25, 1995), the Divisional Court determined the proper approach to s. 46(1)(d) of the Local Government (Miscellaneous Provisions) Act 1976 (“**the 1976 Act**”), which governs private hire services outside London and provides that “*no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence...*”
17. Section 80 of the 1976 Act defines “*operate*” in terms materially similar to those of s. 2 of the 1998 Act: “*...in the course of business to make provision for the invitation or*

¹⁷ BRD/5/43/§§11-12.

acceptance of bookings for a private hire vehicle.” Buxton J (with whom Balcombe LJ agreed), held that:

“I am careful to eschew... any attempt to introduce the complications or, indeed, even the simpler parts of the law of contract into this matter. It is simply a question of asking, in common sense terms, whether there has been provision made in the controlled district for invitation or acceptance of bookings.”¹⁸

He concluded, on the facts:

“...the booking was accepted in the ordinary meaning of the word by the lady who said that the taxi would be there in less than five minutes. Whether or not that was a contract, it seems to me, is not the point.”

18. The proper approach – when determining who ‘makes provision for the invitation and acceptance of bookings’ and who ‘accepts bookings’ – is to adopt a common-sense approach: the contractual position is not determinative. The court should simply ask who, in practical terms, makes provision for the invitation and acceptance of, or accepts, the booking.

Plying for hire

19. The question of plying for hire does not form part of the issues to be determined on this appeal. Nonetheless, it features at various points in the correspondence in the Hearing Bundles. This brief explanation is provided in order to assist the Court to understand the legislation:

20. Section 7 of the Metropolitan Public Carriage Act 1869 provides:

“If any unlicensed hackney... carriage plies for hire, the owner of such carriage shall be liable for a penalty not exceeding five pounds for every day during which such unlicensed carriage plies.”

21. The authorities show that:

- (a) the offence is committed when the vehicle plies for hire;¹⁹

¹⁸ See to the same effect *East Staffordshire Borough Council v Alan Rendell* (The Independent, November 3, 1995).

¹⁹ Compare with the similar offence of plying for hire under s. 45 Town Police Clauses Act 1847, in respect of which the proprietor of the vehicle plies for hire: “*If the proprietor or part proprietor of a carriage... permits the same to be used as a hackney carriage plying for hire within the prescribed distance without having obtained a licence as aforesaid for such carriage... every such person so offending shall for every such offence be liable to a penalty not exceeding forty shillings.*” On the distinction between the two statutes see: *Nottingham City Council v Woodings* [1994] R.T.R. 72, 78.

- (b) the question whether the offence has been committed is sensitive to the particular circumstances in question; it is “*largely a question of degree, and therefore fact*”;²⁰
- (c) in order to ply for hire a vehicle must:
- (i) “*be exhibited or be on view to the public*”; and
 - (ii) “*while on view expressly or impliedly solicit custom, in the sense of inviting the public to use it.*”²¹

Accepting out of area bookings

22. The LTDA’s submissions, in its intervention, focus on the acceptance of ‘out of area bookings.’ TfL’s position, consistent with that of several other licensing authorities, is that the problems to which cross-border hiring gives rise can only be properly addressed by amendments to primary legislation.²² TfL has been pressing the Government on this matter.
23. TfL has set out its understanding of the relevant law on this point in Appendix 1 to this skeleton argument, in order to assist the Court.

RELEVANT BACKGROUND

24. ULL is one of several entities that operate around the world under the Uber brand. On 31 May 2012, TfL granted ULL a London PHV operator’s licence for a period of five years.²³ ULL was the first exclusively app-based private hire operator to enter the market in London. Since 2012 a number of traditional operators have also developed app-based booking platforms, although they typically also still accept bookings over the phone.²⁴ Other app-only operators have now entered the London market.
25. ULL grew quickly over that initial five-year licence period. As of 19 March 2018 there were 114,054 individuals holding active PHV driver’s licences. Of those, 43,408 drive

²⁰ *Cogley v Sherwood* [1959] 2 QB 311, 323-4

²¹ *Rose v Welbeck Motors* [1962] 1 WLR 1010, 1013

²² **CB/17/312/§309.**

²³ **CB/1/2.**

²⁴ **CB/17/228/§31.**

for ULL – representing 38% of the market.²⁵ Some of these may also drive for other operators.

26. TfL welcomes technological innovation in the PHV sector.²⁶ However, Ms Chapman describes how ULL sometimes exhibited a “*dismissive attitude to the regulatory regime in London and to TfL itself*”.²⁷ Mr Elvidge recognises that, when he states that ULL’s approach to doing business was not “*always ... in keeping with the custodianship of a business that wants to build long-term partnerships with all its stakeholders*.”²⁸ Ms Powers-Freeling says that it is not uncommon for companies in her previous sector (financial services) to have a hostile attitude to regulation.²⁹
27. Whether because of its rapid growth or otherwise, ULL also attracted the attention and criticism of various third parties. The LTDA, Licensed Private Hire Vehicles Association (“**LPHCA**”) and others took the view that ULL’s business model was not consistent with the licensing regime in London. Following detailed correspondence between the parties, TfL initiated Part 8 proceedings in the High Court in 2015, to determine whether or not ULL’s PHVs are “*equipped with a taximeter*”, for the purposes of s. 11 of the 1998 Act. It is an offence for a PHV to be equipped with a taximeter. TfL took the view, throughout, that ULL’s vehicles do not breach s. 11; that view prevailed at a hearing before Ouseley J, attended by TfL and ULL, as well as the LTDA and LPHCA (*TfL v Uber London Limited and others*). The evidence provided by ULL in the course of that hearing is addressed separately below.
28. Shortly afterwards, in late 2015, the LPHCA issued judicial review proceedings, arguing that ULL’s vehicles were plying for hire, because they were being displayed for immediate hire on the Uber app.. The claim was withdrawn.
29. At the same time, ULL issued judicial review proceedings challenging certain changes that TfL had made to the licensing regime in the PHV sector. At first instance, the High Court quashed two of the changes introduced by TfL, but upheld another (*R (Uber) v Transport for London* [2017] ACD 54). The Court of Appeal overturned the decision of the High Court and upheld one of TfL’s changes in early 2018 ([2018] EWCA Civ 1213).

²⁵ **CB/17/228 §30.**

²⁶ **CB/17/229/§36.**

²⁷ **CB/17/228/§34.**

²⁸ **CB/14/131-132/§25.**

²⁹ **CB/16/212/9(c).**

30. TfL draws this to the Court's attention in order to highlight that ULL's entry onto the London market has generated a significant level of interest and, in some cases, litigation.
31. On 28 February 2017 ULL applied to renew its operator's licence for five years. In the course of correspondence between the parties, TfL expressed concerns about various ongoing issues. Two in particular were not resolved by the date on which the licence was due to be renewed (May 2017):
- (a) First, TfL had become aware of two separate statements by Uber group companies, in the course of litigation in the United Kingdom and Canada, which cast doubt on various statements made by ULL to TfL in the course of 2014 concerning how its operating model worked.
 - (b) Second, TfL had become aware via press reports of the use by Uber group companies in some jurisdictions of a software program called Greyball to evade regulatory enforcement. The parties had corresponded on these questions, but TfL was not satisfied by the responses that it had received.³⁰
32. On 16 May 2017, TfL granted ULL a licence for four months, in order to consider these questions further. That licence expired on 30 September 2017. Following further, extensive, correspondence between the parties, TfL informed ULL on 22 September 2017 that it had concluded ULL was not a "*fit and proper person*" to hold a PHV operator's licence in London.³¹ TfL's reasons for reaching that conclusion are set out in more detail below.
33. As explained at paragraph 37 of Ms Chapman's first witness statement, TfL has met with various representatives of the Uber Group in the months following the Decision. Those meetings have helped TfL to understand the various changes ULL planned to introduce. Additionally, as a responsible regulator and because ULL was continuing to operate under s26 of the 1998 Act, it was important for public safety reasons that these meetings took place, for example to understand to what extent any planned changes would improve public safety while ULL continued to operate. ULL presented documents to TfL which were discussed in some of these meetings. TfL sought clarification and raised questions where appropriate on the detail of these documents.

³⁰ TfL also expressed further concerns about the use of the Uber app to track customers after journeys were completed and the behavior of ULL drivers [CB/17/231/232/§§42-6].

³¹ CB/17/233/§§50-52.

THE EVIDENCE

34. As explained above, the evidence on this appeal broadly falls into three areas. This section of TfL's skeleton argument considers the evidence under these headings:
- (a) Matters that informed the Decision, but are now historic. These matters remain relevant for the Court, when determining whether ULL is now a fit and proper person to hold a PHV operator's licence, but they are no longer live matters of concern to TfL. They have either been addressed by changes introduced by ULL, or they relate to an historic course of conduct that has now been abandoned (see for example of Onfido and Push Doctor below). ULL now accepts that TfL's decision was correct at the time it was made. But, for the reasons set out above, the Court should take ULL's historic conduct into account, when determining whether it is now a fit and proper person to hold a PHV operator's licence.
 - (b) Matters of concern that have arisen since the Decision and are relevant to ULL's fitness and propriety.
 - (c) The changes that ULL has made to its operations, culture, some of its personnel, systems and structures since the Decision. As Ms Chapman explains in her third witness statement, "*it is difficult for TfL to assess ULL's changes to its corporate culture and approach, because they will take time to become embedded in the business.*"³² The Court must determine, having read and heard the evidence, whether it has sufficient confidence that ULL is a fit and proper person now to hold a PHV operator's licence.

(1) Matters that informed the Decision but are now historic

The 2014 Correspondence

35. The evidence on this issue can be found at:
- (a) Decision Letter §§2-25 [CB/3/2-10].
 - (b) Chapman 1 §§57-121 [CB/17/236-255].
 - (c) Elvidge 1 §§63-99 [CB/14/142-153].

³² CB/22/378/§6.

(d) Elvidge 3 §§58 [CB/18/337-8].

36. This was one of the three key areas of concern that informed TfL's Decision not to renew ULL's licence. The relevant facts are set out in detail in the Decision letter and in Ms Chapman's witness statement. They are not in issue between the parties (as set out in more detail below). In brief summary:

- (a) Over the course of 2014, the parties engaged in correspondence concerning the nature of ULL's booking processes. The purpose was to ascertain whether ULL's model was consistent with the 1998 Act. TfL's primary concern was to ensure that it was ULL (not Uber BV and not individual drivers) that was accepting bookings made by its customers. This was important, because, if the acceptance was by Uber BV or by individual drivers, Uber BV/the drivers would be committing an offence.
- (b) On letters of 17 March 2014 and 17 June 2014 (following a request for further detail), ULL set out the detailed process flow of its bookings.³³ On both occasions ULL stated that the booking was accepted by ULL before it was passed on to the driver.
- (c) ULL also adopted that position in its evidence before the High Court in the taximeter litigation.³⁴
- (d) In the course of 2016, TfL became aware that ULL had described the booking process differently in evidence provided to an Employment Tribunal in a dispute concerning whether or not ULL's drivers were workers, for the purposes of European law. A different Uber group company had also provided a further, contradictory description of its booking systems in a separate case before the Superior Court of Justice in Ontario. In both those cases, Uber's position was that the booking is accepted by the driver, before it is accepted by the relevant Uber entity.³⁵
- (e) TfL engaged in further correspondence with ULL on this question in 2016 and sought clarification of these discrepancies. Mr Elvidge accepts that ULL's response to this further correspondence was defensive. In particular, ULL

³³ See Decision [CB/3/3-4]; Chapman 1 [CB/17/238-242/§§64 and 79].

³⁴ Decision [CB/3/4-5]; Chapman 1 [CB/17/245-6/§§87-90].

³⁵ Decision [CB/3/6-8]; Chapman 1 [CB/17/246-248/§§91-96].

alleged that TfL's interest in the matter had been prompted by third parties competing with ULL.³⁶ This repeated the same allegation advanced by ULL in 2014, in the course of the original correspondence. Mr Elvidge now accepts that this suggestion was unfair.³⁷

- (f) There followed extensive correspondence between the parties (including a visit to ULL's offices and ultimately the appointment of a third-party systems expert to investigate how ULL's platform operates).³⁸ TfL's conclusion, in the Decision, was that "*ULL's presentation of its processes in 2014 was full, but false in a material respect.*"³⁹ Mr Elvidge recognises that "*ULL gave information that was not always correct or was not sufficient.*"⁴⁰

37. As set out below, ULL has now amended its booking systems, in the light of this correspondence (though it maintains that its original platform complied with the statutory framework).

38. The list of issues also identifies for the Court's decision – if that is possible on the evidence – a narrow question concerning the extent of ULL's knowledge that it was misleading TfL at the time of the 2014 correspondence. Ms Chapman concludes that TfL was entitled to rely on ULL's statements and says that she "*struggles to understand*" Mr Elvidge's conclusion that ULL was not sufficiently engaged with the important question of sequencing.⁴¹ Ms Chapman reiterates the conclusion in the Decision, that ULL "*must have known*" how its model operated and the correct sequence of the relevant steps.⁴²

39. For his part, Mr Elvidge states that he has not seen anything in ULL's internal documents to suggest that there was any intention to mislead TfL.⁴³ However, Mr Elvidge was not engaged by ULL at the time. The parties have agreed that the Court should seek to decide (if it can) whether ULL intended to provide incorrect information to TfL on this point.⁴⁴

³⁶ See discussion in Chapman 1 [CB/17/248/§99] and Elvidge 1 [CB/14/147-8/§86].

³⁷ See [CB/18/337/§58(b)]: "*On any view, the tone of the letter was unnecessarily – indeed inappropriately – aggressive.*"

³⁸ Decision [CB/3/7-10/§§16-25]; [CB/17/248-254/§§97-117].

³⁹ CB/3/10/§25.

⁴⁰ CB/17/142/§65.

⁴¹ CB/17/243/§84(a).

⁴² CB/17/143/§84(b).

⁴³ CB/14/146/§77.

⁴⁴ See issue (a) on the list of issues at [CB/6/30].

Greyball and regulatory evasion

40. The evidence on this issue can be found at:
- (a) Decision Letter **[CB/3/10-16/§§26-52]**.
 - (b) Elvidge 1 **[CB/14/154-162§§100-129]**.
 - (c) Chapman 1 **[CB/17/256-267/§§122-162]**.
 - (d) Elvidge 2 **[CB/18/338-340/§§59-65]**.
41. This was the second factor on which TfL relied, when taking the Decision not to renew ULL's licence in September 2017. Once again, the relevant facts are set out in detail in the Decision Letter and the evidence. By way of brief summary:
- (a) In March 2017 it came to TfL's attention, through press reports, that Uber had developed a piece of software known as 'Greyball', by which it is able to provide a modified version of the Uber app to certain identified customers. The press coverage suggested that this had been used to evade regulatory enforcement by 'Greyballing' known enforcement officers in some jurisdictions.⁴⁵
 - (b) TfL approached ULL and requested clarification about the position. There followed what Ms Chapman describes as frustrating and lengthy correspondence on the issue.⁴⁶ She explains that the majority of the information that later came to light was "*the result of TfL's persistent following up of previous answers.*"⁴⁷ Mr Elvidge agrees, by way of example, that ULL's original response could have gone further and explained the position more fully.⁴⁸
 - (c) The result of that correspondence was that it became clear that Jo Bertram, the Regional Manager for Northern Europe and the named representative of ULL on its licence application, had been involved in correspondence discussing the use of Greyball to evade regulatory enforcement in other jurisdictions. Mr Elvidge agrees that the emails "*could reasonably be understood on [their] face*" to mean that she approved the use of Greyball for that purpose, in the face of what Uber

⁴⁵ Decision **[CB/3/10-11/§§26-28]**; Chapman 1 **[CB/17/256/§§122-3]**.

⁴⁶ **CB/17/256.**

⁴⁷ *Ibid.*

⁴⁸ **CB/14/55/§106.**

considered over aggressive law enforcement.⁴⁹ Ms Chapman considers that to be the only reasonable interpretation of the correspondence.⁵⁰

- (d) Ms Bertram was appointed a Director of ULL on 18 August 2017 and was noted as the nominated representative on ULL’s licence application made to TfL on the same date, but resigned as a director of ULL on 30 August 2017 and stepped down from any engagement with ULL by 17 September 2017.⁵¹ Ms Chapman concludes that this “*rapid turnaround*” was a direct response to TfL’s probing.⁵² Mr Elvidge seems to agree with that proposition.⁵³
- (e) As to the other ULL staff copied in on the 2015 Greyball email chain⁵⁴, Matthew Wilson (ULL’s Legal Director), Andrew Byrne (ULL’s Head of Policy) and Harry Porter (UK Communications lead) remain employed at ULL.⁵⁵ ULL says that Mr Byrne and Mr Porter unequivocally state that they had any knowledge or understanding of the term Greyball, or its potential for misuse.⁵⁶ Mr Wilson was aware that the Uber group had developed techniques to address misuse of the app, including (potentially) misuse by customers who employed by regulatory authorities. However, he was not asked to – and did not – advise on the use of the app.⁵⁷

Reporting criminal behaviour

42. The evidence on this issue can be found at:

- (a) Decision [CB/3/16-17§§54-58].
- (b) Elvidge 1 [CB/14/169/§150].
- (c) Jones 1 [CB/15/200-207].
- (d) Chapman 1 [CB/17/267-270/§§164-176].
- (e) Jones 2 [CB/19/352/§§28-36].

⁴⁹ CB/14/157/§115.

⁵⁰ CB/17/261/§§138 and 141.

⁵¹ CB/17/266/§§161.

⁵² CB/17/266/§162.

⁵³ CB/14/138-9/§§54 and 58.

⁵⁴ CB/17/292/251

⁵⁵ CB/17/258/130;

⁵⁶ CB/17/294/§255.

⁵⁷ CB/17/292/§251.

(f) Elvidge 4 [**CB/21/372-3/§§12-17**].

(g) Chapman 3 [**CB/22/383/§§26-7**].

43. The relevant backdrop can be summarised briefly:

(a) On 12 April 2017, the Metropolitan Police Service (“**MPS**”) wrote to TfL and expressed concerns that ULL had not reported a number of serious and potentially criminal allegations against its drivers to the police.⁵⁸

(b) The parties then engaged in correspondence, in the course of which ULL explained its position that the privacy of the passenger required that it should be the passenger who referred such matters to the police.⁵⁹

(c) Mr Jones addresses this point in his evidence. He does not accept some of the criticisms made in the Decision of ULL’s historic reporting practice.⁶⁰ However, he describes how ULL have now put in place a system for reporting allegations of serious (or designated) offences to the police.⁶¹

(d) Ms Chapman’s evidence is that ULL’s current policy is now consistent with the approach that TfL expects of a responsible operator.⁶²

Push Doctor

44. The relevant evidence on this point can be found at:

(a) Decision [**CB/3/17-18/§§59-63**].

(b) Elvidge 1 [**CB/14/171-177/§§153-176**].

(c) Chapman 1 [**CB/17/270-276/§§177-197**].

(d) Elvidge 3 [**CB/18/340-341/§§66-73**].

45. In summary:

⁵⁸ Decision [**CB/3/16/§54**].

⁵⁹ **CB/17/268/§168**.

⁶⁰ **CB/15/204/47**.

⁶¹ **CB/15/206/§§59-60**.

⁶² **CB/17/300/§271**.

- (a) Between 22 August 2016 and 23 September 2016, ULL trialled a new system of obtaining medical certificates for prospective ULL drivers. The drivers were examined over the internet by online General Practitioners. TfL objected to this practice, and ULL stopped it.
- (b) In the Decision, TfL concluded that a satisfactory and reliable medical examination, which includes measuring the blood pressure and eyesight of the applicant, could only be conducted in person.⁶³
- (c) Mr Elvidge’s evidence is “*I do have reservations about whether the eye tests were open to abuse by an applicant who was determined to cheat*”, though he does not accept that it was clear and obvious that the proposed solution was unsatisfactory.⁶⁴ His overall position is that there is a “*key lesson*” for ULL here: it should document the assessment of important changes and communicate more fully with TfL.⁶⁵ He accepts that ULL should have told TfL before introducing the service and describes the introduction of Push Doctor as a “*mistake*”.⁶⁶
- (d) Ms Chapman’s first statement welcomes ULL’s commitment only to pass on information to drivers that reflects TfL’s guidance on how to undergo a medical examination. It also stresses that ULL must provide an undertaking not to circumvent or redesign any part of the licensing process in future.⁶⁷ Mr Elvidge offers that assurance in his third witness statement and says that he understands TfL’s concerns on this question.⁶⁸

Onfido and Enhanced Criminal Records Certificates

46. ULL’s reliance on Onfido to provide enhanced Criminal Records Bureau Certificates is of a similar nature to the Push Doctor issue discussed above. The relevant evidence can be found at:

- (a) Decision [**CB/3/18-19/§§64-69**].
- (b) Elvidge 1 [**CB/14/177-184/§§177-199**].

⁶³ **CB/3/17-18/§60.**

⁶⁴ **CB/14/176/§172.**

⁶⁵ **CB/14/177/§174.**

⁶⁶ **CB/14/177§175; 18/341/§70.**

⁶⁷ **CB/17/300/§272.**

⁶⁸ **CB/18/341/§70.**

- (c) Chapman 1 [CB/17/276-281/§§198-217].
- (d) Elvidge 3 [CB/18/340-1/§§66-73].
47. Applicants for a private hire driver's licence must obtain enhanced Criminal Records Bureau checks from the Disclosure and Barring Service ("DBS"). TfL is a registered body, with statutory powers to apply for Enhanced Criminal Records Checks ("ECRCs"). TfL appointed GBGroup, another registered body, to obtain ECRCs on its behalf.
48. From 2015-2017 ULL recommended that applicant drivers use Onfido, a third party company, to obtain ECRCs as part of its 'Ignition' program. Following concerns from the DBS, it emerged that Onfido was relying on ULL itself to conduct identification checks of applicants.⁶⁹
49. Mr Elvidge states that there was no requirement from the DBS for the verification process to be carried out by a third party. Indeed, the DBS guidelines expressly state that an employer may carry out those checks.⁷⁰ Ms Chapman disagrees and notes that this offered a further example of ULL taking steps to interfere with TfL's private hire licensing requirements. As she explains, TfL expects operators to discuss concerns with TfL in a constructive manner, not to circumvent them.⁷¹ Mr Elvidge stresses that ULL was not seeking to interfere with or circumvent the regulatory and licensing regime, but he recognises that ULL should have proactively sought TfL's feedback on this system.⁷²

(2) Matters that have arisen since the Decision

Data Breach

50. The relevant evidence can be found at:
- (a) Elvidge 1 [CB/14/163-43/§§130-148].
- (b) Chapman 1 [CB/17/302-310/§§277-301].
- (c) Elvidge 3 [CB/18/326-327/§§14-19].

⁶⁹ CB/3/18-19/§§64-68.

⁷⁰ CB/14/183/§§196(a).

⁷¹ CB/17/280/§§212 and 216-7.

⁷² CB/14/184/§198(c); 18/341/§70.

(d) Chapman 3 [CB/22/379/§§8-12].

51. In November 2017, ULL gave verbal notification to TfL that its systems had suffered a data breach in 2016, although minimal details were given about who had been affected.⁷³ It later emerged that over 2.5 million ULL accounts had been compromised (both customer and driver), though it took some time for ULL to clarify the extent of the breach.⁷⁴ Uber paid the hackers \$100,000 to secure the return of the data in 2016.

52. Ms Chapman expresses concern (amongst other things) that:⁷⁵

(a) The data loss was so large;

(b) ULL appeared to have no control over its own data, where it was stored, or the later investigation into the loss of those data;

(c) Some companies within the Uber group knew of the hack for some time – and indeed paid off the hackers – but ULL was not aware of the situation for over a year;

(d) ULL was not minded to inform its customers, because it formed the view that the data lost was not sufficiently sensitive.⁷⁶

53. Ms Chapman concludes that the Data Breach is relevant to this appeal in two respects:⁷⁷

(a) The historic conduct of ULL and other companies in the Uber Group is relevant to ULL's fitness and propriety now, for the reasons set out above; and

(b) The response of ULL in 2017 – specifically its lack of control over its own data and the investigation into the loss of that data – is also relevant to its fitness and propriety now.

⁷³ CB/17/302/§277.

⁷⁴ CB/17/303/§282. ULL originally suggested that only a very small number were affected.

⁷⁵ CB/17/309/§300.

⁷⁶ CB/17/205/§289.

⁷⁷ CB/17/309-10/§301.

54. Mr Elvidge recognises that the failure to report the breach in 2016 was “*wrong*.”⁷⁸ He also says that the experience of the data breach was one of the major factors that triggered the new Compliance Protocol to govern relationships within the Uber group.⁷⁹

Ripley

55. The evidence on this question can be found at:

- (a) Chapman 1 [CB/17/310-311/§§302-306].
- (b) Elvidge 3 [CB/18/327-329/§§20-29].

56. The relevant facts are that:

- (a) In January 2018, ULL informed TfL, shortly before the news went public, that some Uber group companies, in other jurisdictions, had used a software tool called Ripley to remotely lock computers during unexpected visits by regulators.⁸⁰
- (b) Mr Elvidge explains that ULL had not informed TfL about this possible use of Ripley, because it was not aware that it could be misused in this fashion. He also confirms that Ripley was not used in that manner in the United Kingdom.⁸¹ He confirms that, in his view, it is “*not acceptable*” to use Ripley in that manner and that he can “*understand*” Ms Chapman’s concerns, that other Uber-group companies used this software in the past (in a manner that is broadly consistent with Greyball).⁸²

Hacking of ULL accounts

57. The relevant evidence can be found at Chapman 3 [CB/22/389-393/§§52-69].
58. The only evidence on this question comes from Ms Chapman. In short, a BBC London report that day announced that a significant number of ULL customers had had their accounts hacked. Following those hacks, they had been charged for journeys that they did not take. Those accounts were individually hacked, via a variety of means including phishing emails, or the hacking of another online platform, on which the ULL customer

⁷⁹ CB/18/327/§17.

⁸⁰ CB/17/310-311/§§301-306.

⁸¹ CB/18/328/§22.

⁸² CB/18/329/§29.

employs the same login password.⁸³ ULL has explained, in the course of subsequent correspondence, that absolute numbers of hacking cases (of this kind) are relatively low, though they have increased over the last two years.

59. Ms Chapman explains that the hacking of ULL users' data is relevant to this appeal because:⁸⁴
- (a) ULL was slow to tell TfL that a major (and adverse) news item was about to be published: TfL found out from BBC South East itself; and
 - (b) Although the numbers remain small, ULL should reflect on the growing number of incidents of hacking of ULL accounts.

Review of past cases of driver misconduct

60. The evidence in this issue can be found at:

- (a) Jones 1 [**CB/15/207§62**].
- (b) Chapman 1 [**CB/17/298-300/§§267-271**].
- (c) Jones 2 [**CB/19/354-356/§§39-45**].
- (d) Elvidge 3 [**CB/21/372/§§15**].
- (e) Chapman 3 [**CB/22/380-383/§§13-25**].

61. Once TfL became aware of ULL's lack of reporting of complaints, it asked ULL to conduct an urgent review of past complaints about driver conduct, in order to identify incidents that should have been reported to the relevant authorities at the time. ULL agreed to do so. A total of 2,516 driver accounts have now been reviewed: 1,148 were subject to a more serious 'case-by-case review' and 1,402 were subject to a less serious 'incident' review. TfL has received 607 driver dismissal forms from ULL. 251 drivers have been dismissed as a result of the case-by-case review and a further 201 as a result of the serious incident review.⁸⁵

⁸³ **CB/22/389-91/§§52-61.**

⁸⁴ **CB/22/393/§69.**

⁸⁵ **CB/17/299/§269; CB/22/380/§14.**

62. The majority of those cases have now been referred to the MPS (where appropriate). However, as at the date of Ms Chapman's third statement, 13 incidents took place outside Greater London and have not yet been referred to the police in those areas, and 14 have not been referred because they are now too old to be reported.⁸⁶ Ms Chapman concludes that the results of this review demonstrate that TfL was right to be concerned about this issue. She notes that TfL has had to immediately suspend 221 drivers from working, on public safety grounds, and concludes that ULL's historic systems were inadequate.⁸⁷

(3) Changes by ULL since the Decision

63. The relevant evidence is distributed throughout the various statements. The key passages can be found at:

- (a) Elvidge 1 [CB/14/139-141/§§59-62]; [151-153/§98]; [160-162/§§124-129].
- (b) Jones 1 [CB/15/194-200/§§16-33]; [207-8/§§63-67].
- (c) Powers-Freeling 1 [CB/16/214-217/§§12-27].
- (d) Chapman 1 [CB/17/285-291/§§226-244].
- (e) Elvidge 3 [CB/18/329-337/§§30-56].
- (f) Jones 2 [CB/19/347-352/§§8-27].
- (g) Powers-Freeling 2 [CB/20/361-366/§§5-24].
- (h) Elvidge 4 [CB/21/370-374/§§4-19].

64. ULL has set out its evidence, concerning the changes it has made since the Decision, in some detail in its skeleton argument [CB/1/12-23/§§31-58]. That is not repeated here. The changes introduced by ULL fall into two broad categories.

65. First, structural changes, of which the most important appear to be:

⁸⁶ CB/22/382/§§20-21.

⁸⁷ CB/22/382-3/§§23-25.

- (a) Governance changes. ULL has changed its constitution and governance arrangements since the Decision. It has established a Licensed Operations Management Committee (“**LOMC**”). The Board also now contains a sub-committee on licensed operations, which has overall responsibility for compliance.⁸⁸
- (b) Personnel. ULL has appointed a number of new non-executive directors to the Board, including Ms Powers-Freeling.⁸⁹ As explained above, Ms Bertram has also been removed from her directorship at ULL, and indeed any role within the business. As far as TfL can tell, all other personnel within ULL at a senior level remain the same.
- (c) Processes. The Uber Group has introduced a new global Compliance Protocol. ULL has also introduced other new policies and processes to inform its decision making.⁹⁰
- (d) Relationship with the wider Uber Group. Ms Powers-Freeling explains that she has established a set of regular meetings with the Uber leadership as part of a wider change in the relationship with the Uber group. The focus of that change is to ensure that other Uber group companies support ULL’s regulatory compliance.⁹¹

66. Second, ULL has embarked on the process of transforming its corporate culture:

- (a) Relationship with TfL as regulator. ULL has sought to ‘reset’ its relationship with TfL. Dara Khosrowshahi, the new Chief Executive of the Uber Group met with TfL’s Commissioner, and others, in October 2018 and offered a personal apology on behalf of ULL and the Uber Group for ULL’s behaviour.⁹² ULL has made clear that it wishes to have a different relationship with TfL and has committed to communicate proactively with TfL on matters of legitimate interest to TfL as regulator.⁹³ Ms Powers-Freeling recognises that rebuilding TfL’s trust in ULL is a long and slow process.⁹⁴

⁸⁸ **CB/16/214/; CB/17/187/§231.**

⁸⁹ **CB/17/188/232; CB/20/362/§7.**

⁹⁰ **CB/15/197/§§27-8; CB/19/347-350/§§9-15.**

⁹¹ **CB/16/215/§§18-9; CB/15/196/§26; CB/20/364/§§14-15.**

⁹² **CB/17/282/§219.**

⁹³ **CB/18/332/§§41-51.**

⁹⁴ **CB/16/214/§15-16.** See also **CB/19/354/§§37-8.**

- (b) Change to ULL’s overall culture. Many of the structural and process changes described above are directed at transforming ULL’s broader corporate culture. Mr Elvidge refers to this as changing ULL’s “*norms*.”⁹⁵ ULL provided TfL with a Culture and Governance Submission on 30 January 2018, which sets out the scope of that aspiration to ‘do the right thing.’⁹⁶

67. As Ms Chapman explains, at various points in the course of her evidence, TfL recognises these commitments to embed change within ULL. However, embedding these new norms, and transforming the corporate culture of ULL, will take time.⁹⁷ It will also take time to repair TfL’s impression of ULL as an licence holder. As Ms Chapman puts it:⁹⁸

“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.”

68. Ms Chapman’s witness statements identify a number of recent incidents, which demonstrate, in her view, that ULL’s new corporate culture is not yet fully embedded:

- (a) As ULL agrees, it found out too late about the 2016 data breach (in November 2017). Even after it became aware of that breach, it struggled to obtain the information it required from the other companies in the Uber group. Mr Elvidge candidly admits that this incident was a major driver in leading ULL to conclude that it needed to redefine its relationship with the other companies in the Uber Group.⁹⁹
- (b) The disclosure of the use of Ripley in other jurisdictions (in January 2018), was a concern to TfL, because it was broadly consistent with the behaviour connected to the use of Greyball (about which TfL was aware before the Decision).¹⁰⁰
- (c) The dialogue between ULL and TfL concerning the geographical boundary that ULL had offered to impose upon its operations, was not as clear or transparent

⁹⁵ CB/18/330/38; CB/21/373/§§16-17.

⁹⁶ CB/17/288/§§235-6.

⁹⁷ See by way of example [CB/17/289/§240].

⁹⁸ CB/17/289/§240.

⁹⁹ CB/18/327/§17.

¹⁰⁰ CB/17/311/§306.

as TfL would expect. TfL had understood that ULL would constrain its operations to Greater London only and was surprised to find this was not the case.¹⁰¹

(d) Ms Chapman expresses her concern that ULL entered into an arrangement to provide English language classes and mock exams for drivers with International House – a designated TfL partner for English language testing – but did not inform TfL of that agreement for nearly a year. It seems that ULL has recently gone “live” with this arrangement prior to informing TfL.

(e) Finally, ULL did not warn TfL in advance that a major news report was to be published on BBC South East concerning the hacking of individual ULL accounts.¹⁰²

69. The Court will need to consider these incidents in the light of the recent changes introduced by ULL, as outlined above.

MARTIN CHAMBERLAIN QC

TIM JOHNSTON

18 June 2018

¹⁰¹ **CB/17/314/§316**. See also her concerns that the dialogue concerning driver hours was not sufficiently clear and TfL had misunderstood ULL’s intentions (albeit ULL’s intention was clear from a close reading of the relevant documents) **[CB/17/314/318]**.

¹⁰² **CB/22/393/§69**. ULL explained that it believed the story would run in the South East only, and would not concern London. Given that the story attracted comment on a national level (from the Chair of the Digital, Culture, Media and Sport Committee Damien Collins MP), that may be thought to have been optimistic **[CB/22/389/§53 and 392/§66]**.

APPENDIX: CROSS BORDER HIRING

1. The LTDA's submission addresses the question of cross border hiring. The LTDA submits, in summary, that:
 - (a) By sending Uber drivers to work in areas where the vehicles and drivers are not licensed, Uber undermines local licensing control (with safety implications). It points to the fact that other licensing authorities (it relies on the case of Watford) refused ULL's licence renewal application on this basis.¹⁰³
 - (b) Uber's practice of sending drivers to trade in controlled districts, where it has been refused an operator's licence, falls below the standards expected of a responsible operator in London. Indeed, the LTDA suggest that ULL is arguably committing an offence by acting as an operator in an area where it is not licensed.¹⁰⁴
 - (c) ULL has recently agreed to limit the areas within which its licensed vehicles operate, albeit that London 'zone' goes beyond the boundaries of Greater London (which provides the outer limit of TfL's authority). The LTDA suggests that this offers further evidence that ULL pays "*scant regard to the statutory controlled licensing districts.*"¹⁰⁵
2. In TfL's submission, the legal position is as follows.
3. First, in order to comply with the statutory regime set out in Part II of the 1976 Act and the 1998 Act, each of the three licences (operator, vehicle and driver) must be granted by the same local authority. An operator may not dispatch PHVs or drivers that are licensed by another authority: *Dittah v Birmingham City Council* [1993] RTR 356.
4. Second, once the 'triple licensing requirement' has been complied with, a PHV operator may dispatch a licensed PHV to carry out a journey that does not start, end or pass through the controlled district. If the position were otherwise, an operator would need multiple licences to cover every possible district from which they might receive a booking: *Windsor and Maidenhead Royal Borough Council v Khan* [1994] RTR 87 at §§91-2; *Adur DC v Fry* [1997] RTR 257.

¹⁰³ BRD/5/41-2/§§3-6.

¹⁰⁴ BRD/5/41-2/§§2 and 7.

¹⁰⁵ BRD/5/42-3/§§9-10.

5. The underlying rationale for this approach is to ensure that there is a unitary system of triple licensing and enforcement by licensing authorities. In *Shanks v North Tyneside Borough Council* [2001] EWHC Admin 533, Lathan LJ held as follows at §§24-26:

“I consider therefore, that there are good policy reasons for ensuring that there is a unified system of control in relation to private hire vehicles operating within the area of any given authority. That ensures consistency of policy in relation to the provision of private hire vehicles and their drivers. It enables the authority to ensure that it is able to exercise such control as it is entitled to exercise over all the vehicles and drivers being operated to provide private hire services in its area. That seems to me to be a central purpose of the statutory provisions.

...

The meaning of ‘operator’ in s 80 when taken in conjunction with s. 75(2) provides for considerable flexibility. The operator can use the vehicles within his organisation for journeys both inside and outside the area of the local authority in which he is licensed and, indeed, can use such vehicles and drivers for journeys which have ultimately no connection with the area in which they are licensed.”

6. Third, the hallmark of the statutory framework is localism. Licensing authorities may, in principle, impose conditions on an operator’s licence, which seek to advance that ‘local’ agenda, as long as those conditions are consistent with the scheme of the legislation. In *Blue Line Taxis (Newcastle) Ltd v Newcastle upon Tyne City Council* [2012] EWHC 2599 (Admin), Newcastle had revoked the appellant’s licence as a PHV operator. The key facts were:

- (a) The Claimant operated a PHV business in a controlled area next door to Newcastle. Their vehicles frequently passed through Newcastle;
- (b) The Claimant sought a second operator’s licence, in Newcastle, to enable them to dispatch PHVs and drivers licensed in that area. The new entity used the same branding;
- (c) One of the conditions of the licence required the new entity to have a different telephone number. A new number was obtained, but not advertised. Customers were, in effect, encouraged to use the old number. That number could be answered either by an operator in the original operating centre, or in the new operating centre in the Newcastle controlled area;
- (d) The local authority in Newcastle concluded that this was a breach of the telephone condition and revoked the licence.

7. Foskett J held that:

- (a) The wording of the telephone condition was ambiguous, but its intention was clear. The Claimant had not complied with that condition;
 - (b) The condition itself was not *ultra vires* because the discretion to impose conditions is very wide and the hallmark of the scheme is localism (§64);
 - (c) The condition pursued legitimate objectives, consistent with the scheme of the legislation. It ensured that vehicles are only dispatched by their operator and enabled members of the public be able to confidently complain about or claim against their operator. Localism remained the central feature and essence of the scheme established by the 1976 Act.
8. As Ms Chapman explains in her first witness statement, ULL has now constrained its operations to a smaller area, including Greater London and a number of important transport hubs outside the TfL licensing boundary. TfL would have preferred ULL to limit its operations to Greater London only.¹⁰⁶ TfL's position, consistent with that of several other licensing authorities, is that the problems to which cross-border hiring gives rise can only be properly addressed by amendments to primary legislation.¹⁰⁷ TfL has been pressing the Government on this matter.

¹⁰⁶ CB/17/312-314/§§311-316.

¹⁰⁷ CB/17/312/§309.