

IN THE WESTMINSTER MAGISTRATES COURT

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

BEFORE THE SENIOR DISTRICT JUDGE (CHIEF MAGISTRATE) EMMA
ARBUTHNOT

BETWEEN

UBER LONDON LIMITED (“ULL”)

Appellant

And

TRANSPORT FOR LONDON (“TfL”)

Respondent

JUDGMENT – 26TH JUNE 2018

Introduction

1. This is an appeal from TfL’s refusal to renew ULL’s licence. It is a de novo redetermination of ULL’s licence application. I must determine in the light of the evidence before me today whether the decision not to renew the licence is now wrong. I must also ask myself whether ULL is a fit and proper person to hold a Private Hire Vehicle Operator’s licence and of course I have had regard to the public interest as well as ULL’s.
2. ULL is represented by Tom De La Mare QC leading Ranjit Bhowse QC and Hanif Mussa whilst TfL is represented by Martin Chamberlain QC leading Tim Johnston. Gerald Gouriet QC and Charles Holland have provided written submissions which were followed by a brief oral submission. They appear for the Licensed Taxi Drivers Association. They have also provided a short bundle of evidence. They are not parties to the appeal.
3. I have been provided with a core bundle which contains the parties’ skeleton arguments which I attach to this judgment and the principal statements from the

witnesses called on behalf of the parties. I have also received a number of bundles which have been referred to in the evidence.

4. On behalf of ULL I heard from the two executive directors Tom Elvidge and Fred Jones and from Laurel Powers-Freeling the experienced non-executive Chairman of the board. Giving evidence on behalf of TfL was the impressive Ms Chapman the TfL Director of Licensing, Regulation and Charging.
5. The parties agree the law that I should apply and this is set out in their skeleton arguments. I have also been provided with an authorities bundle. I will not set out the agreed legal position. Suffice it to say the licensing regime for London is set out in the Private Hire Vehicles (London) Act 1998 (“the Act”). TfL is empowered to issue licences to private hire vehicles, private hire drivers and private hire operators. Any licence can have conditions attached to it. The Operators’ Licence Regulations issued under the Act impose a set of obligations on the operators. Section 3(3) of the Act sets out that TfL shall grant an operator’s licence where it is satisfied that the applicant is a “fit and proper person” to hold such a licence.
6. TfL is required to exercise its powers to develop and implement safe, integrated, efficient yet economic transport facilities. The Mayor’s Transport Strategy included ensuring that London has a safe secure accessible private hire service enabling all Londoners including the disabled to travel independently and provide an attractive experience which would encourage great use of public transport. It is clear that passenger safety is TfL’s priority.

Background

7. ULL has been a private hire operator since 2012. It operates via an App that drivers and passengers, or riders, as they are termed in Uberspeak, download onto their mobile telephone. In five years the business has increased at an extraordinary rate. In 2012 there 300 drivers using the Uber app now there are 48,000 registered drivers. An executive director and general manager for Uber in the UK and Ireland Mr Elvidge describes a ‘snapshot’ 12 week period when just under 3.6 million riders used Uber.
8. Inevitably such a young business has suffered a number of growing pains which have not been helped by what seemed to be a rather gung-ho attitude of those running the

business in the very recent past. The attitude of the previous managers of ULL appeared to me on the evidence to be that of grow the business come what may.

9. On 28th February 2017, ULL applied to renew its operator's licence for five years. TfL raised a number of on-going issues in correspondence but granted a further four months in May 2017 whilst the letters went back and forth.
10. The issues and correspondence led TfL to question the wisdom of ULL being licenced at all. On 22nd September 2017, TfL wrote a letter to ULL ("the Decision letter") saying that a decision had been made that ULL was not a fit and proper person to hold a Private Vehicle Hire Operator's Licence and that therefore a new licence was not to be granted. This was based on factors which are set out in the two skeleton arguments which are attached and that I set out briefly below.
11. The Decision letter set out a summary of the reasons why ULL was not a fit and proper person. TfL's complaints were as follows: ULL misled TfL in correspondence in 2014 as to the processes used to make bookings. ULL had available to it a software called "Greyball" which could be used to evade regulatory processes and ULL had shown a lack of corporate responsibility in relation to matters which had public safety implications.
12. On 13th October ULL wrote to say they were appealing the decision and the matter came to Westminster Magistrates' Court. In October 2017, the appeal was based on ULL's contention that it was a fit and proper person to hold a PHV licence. In January 2018 I was provided with a provisional list of issues for the appeal. This list made it clear that at that time ULL was not accepting a number of the justified complaints made by TfL. By the time we came to the on Monday 25th June 2018 the list of issues had narrowed greatly and the parties provided a list of agreed conditions that could be attached by this court to a licence if one was granted. ULL had changed a number of its working practices and its governance and TfL took a neutral stance as to whether the licence should be granted by the court. Helpfully TfL explored governance and other matters with the three ULL witnesses called.
13. Importantly by 25th June 2018 ULL was asking for a probationary licence only. The initial period it suggested was one of 18 months but in final submissions it came down to 15 months.

14. It is an important consideration for this court, that ULL accepts now that the Decision not to renew was fully justified, namely that in September 2017 it was not a fit and proper person within the meaning of the Act to hold the licence.
15. Nine months have passed, the changes set out in the skeleton arguments have taken place. The question for this court is whether ULL can be trusted when it says it has changed and whether it will maintain the changes when these proceedings drop away.

Reflections on the evidence

16. I have received substantial documentary evidence which covers the events before the September Decision letter and perhaps more importantly what has happened since. I heard evidence from the two executive directors of the Company, Mr Elvidge and Mr Jones. I also heard from the impressive non-executive Chairman of the Board, Ms Laurel Powers-Freeling. Without her evidence I would have had even more concerns about granting a licence. I was struck by the breadth of her experience including in regulated industries. She has the maturity required for the responsibility that she has accepted. The two other non-executive directors are also of a similar calibre.
17. Mr Elvidge joined ULL in September 2014. He was not involved when the company was describing its processes in one way in letters to TfL (letter dated 17th March 2017 from Ms Bertram at bundle 1 tab 9 page 83 and the other from 17th June 2014 from Mr de Kievit Legal Director in bundle 1 tab 16 page 396) and to Mr Justice Ouseley in the High Court to persuade them that it was the company which accepted the bookings rather than the driver. In the meanwhile Uber was saying to a court in Canada and then ULL to an employment tribunal in the United Kingdom, that it was the drivers who accepted the bookings.
18. Mr Elvidge accepted that what had been said then was false. TfL ask me to consider whether I should make a finding that it was deliberately false. ULL says that it was a failure to understand its own processes and that I should not make a finding which would not be relevant to the issues that are now before me. Having considered the argument it seems to be that it would be unfair on those carrying out the correspondence on behalf of ULL if I were to make any finding of dishonesty without hearing from the people concerned. It is sufficient to say that the correspondence gave a material false picture of the processes then used.

19. Mr Jones' evidence in relation to how ULL was now approaching reporting allegations of serious criminal conduct to the police was encouraging. A review of past cases had been carried out and a number of cases now referred to the police. I agreed with Ms Chapman's evidence that the seriousness of some of the complaints were very concerning and that whoever in ULL had reviewed these matters and not reported them originally lacked common sense.
20. I had to bear in mind that he had launched a public attack on the decision to refuse to renew the licence by launching a petition aimed at the Mayor of London. It was of concern that instead of accepting the blame it tried to whip up a public outcry whilst in fact ULL had brought the refusal of the renewal on itself.
21. The way ULL misled TfL in 2014 and the High Court and the way Mr Jones reacted to the TfL Decision letter were examples of the management behaviour of ULL leading up to and just after the Decision letter.
22. A more mature approach was then taken by the overall Chairman in the United States and in fairness to Mr Elvidge and Mr Jones they have been leading the negotiations with TfL in the last few months.
23. Laurel Powers-Freeling is the new Chairman of the board of ULL. She was an impressive witness with an impressive background. She has put her reputation on the line. Although engaged for just 50 days a year, the last few months had been more demanding of her and she had chaired regular meetings which discussed the licensing situation. She had noticed a change of culture in the company over the last few months. I was satisfied that under her Chairmanship, as long as she is kept informed of what is happening day-to-day in the business, that the changes that ULL has put in hand will be maintained.
24. So far as the Decision letter is concerned, there is now an acceptance that ULL misled TfL and the High Court. There is an apology from ULL. In terms of the second issue, the use of Greyball technology, at least one of the relevant employees who knew about this technology has left the company although I note others remain and perhaps of more significance, ULL has created a Compliance Protocol to . Governance which had been a problem has been focussed on with three non-executive directors appointed led by the impressive Ms Powers-Freeling. The leadership of the company has been changed to a limited extent.

25. The final concern in the Decision letter was ULL's approach to corporate responsibility such as the failure to report criminal allegations made against drivers to the police. In the past ULL considered the privacy of the rider required that he or she report such an allegation to the police. Mr Jones gave evidence that after discussions with the Metropolitan Police and TfL ULL have a new system in place which supports the reporting of serious offences to the police. A scheme by which a medical certificate and an eye test could be administered by post and by telephone was wholly inappropriate and a way of checking for criminal records was criticised.

Matters that have arisen since the Decision

26. A data breach had occurred in 2016 in San Francisco but ULL only informed the regulator in 2017 of this breach. Initially ULL thought it related to the details of one driver but it became apparent later the same day that 2.5 million ULL accounts had been affected. It turned out that the parent company had thought it appropriate to pay the hackers \$100,000. Ms Chapman was particularly concerned that the parent company knew about this for some time but had not chosen to tell ULL. She also was not satisfied by the ULL view that it was not going to tell its customers because the data loss was not very sensitive.
27. A second issue that has arisen since the Decision is Ripley. Ripley is a software tool which some Uber companies had used to remotely lock computers when regulators were visiting. Mr Elvidge explained that Ripley was not used in that way in the United Kingdom but he understood Ms Chapman's concerns.
28. Ms Chapman was also concerned that she found out about some hacking of customer accounts from the BBC. Her concern was that it showed that ULL was still slow to communicate with the regulator.

Changes by ULL since the Decision

29. ULL points out the agreed list of conditions that the parties have set out which will be part of the licence if one is granted. This is evidence it says of its efforts to change its culture, processes and governance.
30. The proposed conditions cover corporate governance and intra-group relationships, they evidence the setting up of a Compliance Protocol which assists with

communications between the Uber group and ULL. It allows for an independent assurance procedure, this condition was important to the regulator as it allows not just internal but external monitoring of compliance with its obligations as a licensed operator. ULL is to communicate any relevant changes to TfL. It is not to circumvent any of its obligations as a licensed operator. Data breaches are to be referred to the regulator and reported transparently. ULL will not use any tool to circumvent the regulators. The criminal reporting policy now in place will continue unless the police decide otherwise. ULL will check every year that their reporting policy remains fit for purpose. Every six months ULL will update TfL with information about the effectiveness of its complaints handling process. ULL will assess within 48 hours of receiving a safety related complaint about a driver whether he or she should be suspended and such a decision will be notified to TfL. As regards employees ULL will not employ those who have evaded enforcement. There is also a condition in relation to training for ride sharing.

31. ULL relies on governance changes since the Decision. There is a sub-committee of the Board which looks at licensed operations and compliance and a Licensed Operations Management Committee.
32. There are new non-executive directors on the board who outnumber the executive directors. An earlier director who was partly responsible at least for the 2014 correspondence has been removed from the board.
33. A new Compliance Protocol has been introduced globally so that information affecting ULL's regulatory position in the United Kingdom will not be kept from it by the parent or any other companies in the group.
34. Ms Powers-Freeling and the other directors have regular meetings with others in the group.
35. The directors are trying to change the corporate culture. The then new Chief Executive of the parent company, Mr Khosrowshahi, met with the TfL's Commissioner in October 2017 and apologised for ULL and Uber's behaviour.
36. Ms Chapman raises the important question though, which is whether there is evidence that these changes are embedded in the way ULL conducts itself. Her attitude is perfectly understandable when all this change has happened so fast and much of ULL's attitude to the regulator has had to be re-calibrated since January this year.

Cross-border hiring – the argument raised by the Licensed Taxi Drivers Association

37. The Association argues that cross-border hiring under the authority of a London PHV Operator's Licence is unlawful yet it is being carried out by ULL. Mr Gouriet argues that that should be taken into account by this court when considering whether ULL is a fit and proper person within the meaning of the Act. He goes on to say that working in areas where the drivers do not have a local licence (or the trinity of licences) undermines local licensing arrangements and particularly so when the licensed vehicles work in areas where ULL has been refused an operators' licence. He said the evidence showed that the invitation for bookings was happening outside London. Finally he contends that a condition not to work outside Greater London should be added to the licence.
38. Mr Gouriet's submissions were short and to the point and they were opposed briefly by ULL and TfL. Mr Chamberlain for TfL said that the legislation requires for a trinity of licences to be granted by the same local authority one for the driver, one for the car and one for the operator. If that is complied with then there is authority which makes it clear that a PHV can send a car out of the controlled district when the journey does not pass through, start or finish in the controlled area. Mr De La Mare argued that there was no booking taking place outside London as the operators were in Aldgate Tower in the City of London. The app on the screen is no different to any other operator's one and was perfectly lawful. Price surging had nothing to do with the regulatory model. As to imposing a condition that ULL stay in Greater London, Mr de la Mare said it would be ultra vires.
39. I do not find this argument is relevant to the matters I have to decide. I noted that TfL did not consider that what ULL was doing was unlawful and they did not rely on it when coming to their neutral view on whether ULL was a fit and proper person. I find that the legislation and the authorities referred to by Mr Chamberlain on the face of it allow for the PHV driver in a trinity of licences situation to leave or never enter or never cross the controlled district. Mr Chamberlain's view was that legislation was required. I had some understanding of that view as the present arrangements did not seem to support a local area determining the numbers of PHVs operating in their area. A condition on ULL's licence and not on other companies' in the same situation would seem unfair.

40. I have considered the evidence and submissions in the case. I have given particular weight to the conditions that have been agreed between the parties. Taking into account the new governance arrangements, I find that whilst ULL was not a fit and proper person at the time of the Decision Letter and in the months that followed, it has provided evidence to this court that it is now a fit and proper person within the meaning of the Act. I grant a licence to ULL.

41. The length of the licence has been the subject of discussion. The rapid and very recent changes undergone by ULL lead me to conclude that a shorter period would enable TfL to test out the new arrangements. A 15 month licence will enable Ms Chapman and her team to check the results obtained by the independent assurance procedure set out in condition number 4 whilst ensuring the public are kept safe.

42. I grant a licence for a period of 15 months.

43. I order that the costs of TfL are borne by ULL.

Senior District Judge (Chief Magistrate) Emma Arbuthnot

26th June 2018

UBER LONDON LIMITED V TRANSPORT FOR LONDON LIST OF AGREED CONDITIONS

In this list, references to the 1998 Act include the Private Hire Vehicles (London) Act 1998 and the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000 (the 2000 Regulations) made under it.

CORPORATE GOVERNANCE AND INTRA-GROUP RELATIONSHIPS

1. Board composition

ULL shall maintain a Board, comprising at least three independent directors who shall be in the majority (one of whom shall be the Chair) and at least two executive directors.

For the avoidance of doubt, this condition will not be treated as having been breached in circumstances where a director resigns or is otherwise no longer able to act as a

director and ULL is in the process of recruiting a successor, provided the recruitment process takes no longer than 6 months.

2. Board/Sub-committee roles

Ultimate responsibility for ULL's licensed operations under the 1998 Act shall lie with the Board. The Board is to be supported in the fulfilment of that responsibility by a sub-committee of the Board chaired by the Chair (or, in the absence of the Chair, another non-executive director). The sub-committee shall be supported by a management committee.

3. Compliance protocol

ULL shall maintain arrangements for:

- a. ULL to be notified by Uber Technologies Inc. (UTI), and Uber BV or, Uber Britannia Limited (UBL) of matters that could be relevant to ULL's obligations as a licensed operator under the 1998 Act wherever they may arise (including in respect of any other affiliated Uber Group company); and
- b. UTI and Uber BV to support ULL in its compliance with its obligations as a licensed operator under the 1998 Act, and respect its autonomy in securing that compliance including in making notifications required by these conditions and the 1998 Act.

4. Independent assurance procedure

ULL shall maintain an independent assurance procedure designed to review and validate the effectiveness of its systems, policies, procedures and oversight mechanisms for promoting compliance with its obligations as a licensed operator in accordance with the 1998 Act as well as these conditions.

ULL shall provide TfL with details about all existing and new customer and/or driver safety and security initiatives, safety and security related products and services and the work of ULL's Safety Team, and the independent assurance procedure shall also include a review of these safety and security initiatives, safety and security related products and services and the work of ULL's Safety Team.

ULL shall provide the licensing authority with a copy of an independently-verified assurance procedure report produced every six (6) months from the date of any decision granting this Licence together with a summary of actions ULL proposes to take in response to that report.

TFL NOTIFICATION OBLIGATIONS AND ENFORCEMENT

5. Notification of significant/material changes

In addition to and without derogation from its obligations under regulation 9(13) of the 2000 Regulations, ULL shall give the licensing authority at least 28 days' advance notice of any material change that it intends to make to its operating model, systems or processes, that may affect compliance with the 1998 Act, 2000 Regulations or other licence conditions, including but not limited to:

- a. Any material proposed changes to the way in which ULL collects and holds passengers' and drivers' data;
- b. Any material proposed changes concerning ULL's booking systems and arrangements for making bookings;
- c. Any material proposed changes relating to the safety and security of passengers and drivers.

Any notice provided must be full, detailed and transparent. Such notice shall include details of the risk assessments carried out and the impact on the safety of passengers and drivers.

ULL shall have regard to any reasoned response raised by TfL in respect of any such changes so notified.

In the event that ULL is unable to comply with the notice requirements in condition [X] because immediate or faster change is required in order to comply with a Court order or other legal obligation or to address an actual or potential emergency, ULL will give the greatest notice reasonably practicable.

6. Circumvention of obligations

ULL shall not circumvent any of its obligations as a licensed operator under the 1998 Act or circumvent or interfere with any arrangements made by the licensing authority in relation to these obligations, including such obligations or arrangements as apply to applicants for or holders of private hire vehicle driver licences or private hire vehicle licences. This concerns any part of the licensing process a driver or vehicle owner is required to undertake and includes but is not limited to obtaining Enhanced Criminal Record Certificates, medical declarations, topographical assessments, English language certificates, MOTs or any other requirements set by the licensing authority as prerequisites to obtaining a driver or vehicle owner licence.

7. Reporting of breaches to the licensing authority, law enforcement and regulatory authorities

ULL shall, to the extent permitted by law, provide a written report to any relevant regulatory and law enforcement authority in the United Kingdom, and to the extent permitted by law, to the licensing authority in any of the following circumstances:

- a. All data breaches, material data losses or infringements of data protection law affecting the data of UK drivers and/or customers, whether those incidents occur in the United Kingdom or elsewhere;
- b. The use or proposed use by ULL, UBL, Uber BV, UTI or any other affiliated Uber Group company ("an Uber Company") in any jurisdiction where a Relevant Person is or has been employed or engaged by an Uber Company at the time of such use or proposed use of any software, tool or other mechanism (including Greyball and Ripley) (i) to interfere with or evade any regulatory enforcement action or (ii) for any improper purpose. For these purposes 'proposed use' means a use proposed or endorsed (whether implicitly or explicitly) by a Senior Manager or Director.

Following any report made concerning 7(a) or (b) above, ULL shall co-operate fully, openly and transparently with any investigation conducted by any regulatory or law enforcement authority and/or by the licensing authority.

In these Conditions, a "Relevant Person" is any person who during the term of this Licence is, or has been, employed or engaged by ULL as a Senior Manager and/or Director.

"Data breaches, material data losses or infringements of data protection law" means any such incident that:

- (i) is, or
- (ii) would, if UK law were to apply, be required by law to be notified to a regulator or law enforcement authority.

8. Transparency during investigations

ULL shall, to the extent permitted by law, provide written notification to the licensing authority of the outcome of:

- a. all investigations, in the United Kingdom or elsewhere, concerning data breaches, data losses or infringements of data protection laws affecting the data of UK drivers and/or customers. This requirement to notify includes but is not limited to all investigations in which a Relevant Person has been implicated in, or found personally culpable for, such a data loss;
- b. all investigations concerning any regulatory breaches or infringements of law by an Uber Company, to the extent that any Relevant Person has been implicated in such conduct or found to be personally culpable for such breach or infringement; and
- c. the outcome of all investigations, in the United Kingdom or elsewhere, concerning the use by an Uber Company of any software, tool or other mechanism (including Greyball and Ripley) to interfere with or evade regulatory enforcement or any other improper purpose to the extent that any Relevant Person has been implicated in or found to be personally culpable for such use.

9. Evasion of enforcement

ULL shall not use any software, tool or any other mechanism to interfere with or evade any enforcement action by a regulatory or law enforcement authority, including the licensing authority.

10. Arrangements with MPS

ULL shall, unless the Metropolitan Police Service (MPS) lawfully requires or agrees otherwise, maintain substantively the current arrangements agreed by the MPS for the reporting of passenger complaints alleging behaviour that may be criminal.

11. Criminal reporting policy

ULL shall consult the MPS at least every calendar year as to whether ULL's policy relating to criminal reporting remains fit for purpose. ULL shall notify the licensing authority of any updates to this policy that are agreed with the MPS and/or any other relevant police authorities, and complies with any guidance issued by the licensing authority.

12. Complaints handling

ULL shall provide an update to the licensing authority every six (6) months on the effectiveness of its complaints handling process. That report shall include up-to-date figures concerning the number of reports made to the police within each relevant period.

ULL shall, within 48 hours of receiving a safety related complaint concerning a ULL driver:

- a. assess whether it is necessary to remove or suspend that driver account pending further inquiries; and

- b. notify any such decision to remove or suspend the driver to the licensing authority, including specifying the details of the driver and the allegation.

13. Not employing people who have evaded enforcement

ULL shall take all reasonable steps to ensure that they do not employ or engage as a Senior Manager or Director any person who has been found (whether by Uber, its external advisers on their behalf, or regulators or law enforcement agencies) to have:

- a. Promoted, approved or facilitated the possible or actual use of Greyball or Ripley, or any other technology, so as to avoid or evade regulation in any jurisdiction (whether in their internal communications or otherwise); or
- b. Otherwise interfered with or evaded regulatory enforcement in the private hire and taxi sector, whether in the United Kingdom or in any other jurisdiction.

14. Ride sharing

ULL shall provide training to all drivers to ensure that any advanced bookings of private hire vehicles at separate fares are carried out safely.

