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05 September 2019

Dear Sirs

Uber London Limited - renewal of London PHV Operator's Licence

Introduction

1. We write on behalf of our client, the Licensed Taxi Drivers Association Limited ("the LTDA").

2. The LTDA is a co-operative community benefit society[1]. Its membership comprises of around 10,200 "black cab" drivers (so, drivers licensed by TfL under s.6 of the Metropolitan Carriage Act 1869 to be in charge of hackney carriages plying for hire within London).

3. As you will be aware, the activities of the multinational company Uber Technologies, Inc. ("UTI") and its associated entities (collectively, "Uber") in this country (and particularly in London) have been a matter of significant concern to the LTDA and its members for some time.

4. Through this firm, the LTDA has sought to ventilate these concerns on many occasions.

1 Registered number 21472R.

5. These have included the LTDA's objection to the renewal of the London PHV operator's licence held by UTI's subsidiary Uber London Limited ("ULL") by this firm's letters of 23 March, 25 April, 12 June and 24 November 2017, and the LTDA's subsequent participation in ULL's appeal ("the Appeal") against TfL's decision of 22 September 2017 not to renew ULL's licence on the basis it was not a fit and proper person to hold it ("the Decision").

6. On 26 June 2018, at the conclusion of the Appeal, Senior District Judge Emma Arbuthnot, the Chief Magistrate, granted ULL a London PHV operator's licence subject to additional conditions agreed between ULL and TfL ("the Conditions") for a period of 15 months ("the Probationary Licence").

7. In giving her judgment on the Appeal ("the Judgment"), the Chief Magistrate held:

> *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.*

8. The Probationary Licence will expire on 25 September 2019.

9. We anticipate that TfL will shortly be undertaking its consideration of an application by ULL to renew that licence.

10. We are instructed by the LTDA to make representations in opposition to that application.

11. TfL should either revoke or refuse to renew ULL's London PHV operator's licence, because –

    (1) the continuing conduct of ULL and other Uber companies demonstrate that, in fact, ULL's corporate culture and approach has not materially changed since the Decision;

    (2) Uber's "regional" model is both unlawful and demonstrative of an attitude towards regulation which falls markedly below the standards to be expected of a responsible operator;

    (3) Uber's "on demand" model substantially adds to congestion and pollution in London and compromises the safety of Londoners;

    (4) Uber's conduct subverts fair competition;

    (5) Uber has demonstrated that it is essentially unregulatable;

(6) in all the circumstances public confidence in the licensing regime would be gravely shaken were TfL to allow ULL to remain licensed.

12. By virtue of the foregoing, the "testing" of ULL referred to by the Chief Magistrate clearly demonstrates that ULL is not now a fit and proper person to hold a London PHV operator's licence.

ULL's corporate culture and approach

13. The starting point are ULL's concessions that, as at the date of the Decision, it was not fit and proper to hold a London PHV operator's licence, and that the Decision was fully justified[2].

14. Given the regularity and severity of its historical misconduct, the only surprising thing about these concessions was how long it took ULL to make them.

15. As the Chief Magistrate found, ULL had given TfL a materially false picture of its processes[3]. It had misled the High Court in the taximeter litigation[4]. Its "gung-ho" attitude was one of "grow the business come what may"[5]. It had used its "Greyball" software to evade regulatory processes[6]. It showed a lack of corporate responsibility which had serious public safety implications[7]. Its conduct (which included defensiveness[8], hostility and a dismissive attitude to the regulatory regime in London and to TfL itself[9]) was characterised by the Chief Magistrate at the pre-trial review on 30 April 2018 as "pretty appalling".

16. Even after the Decision, further misconduct had emerged. Three examples were given in the Judgment, although more were contained in TfL's evidence[10].

(1) On 21 November 2017, and despite personally knowing of the situation since mid-September 2017, Uber's new CEO Dara Khosrowshahi finally revealed that in the *previous year* Uber had been subject to a global data breach in which the personal information of c.50 million customers and c.7 million drivers was stolen. Not only did Uber fail to inform any regulator about this breach at the time, but it paid the criminals who had hacked its systems a ransom of US$100,000 in the hope that they would delete the data and keep quiet.

(2) Uber had used a further software tool, "Ripley", which could remotely lock computers when regulators visited[11].

(3) There had been further attempts to hack the customer accounts of Uber's UK customers, which TfL found out about from a report on the BBC, rather than from ULL[12].

2 Judgment paragraph 14 and see ULL's skeleton argument at paragraph 2.
3 *Ibid*, paragraphs 11, 17-18.
4 *Ibid*, paragraph 24.
5 *Ibid*, paragraph 8.
6 *Ibid*.
7 *Ibid*, paragraphs 11, 19.
8 See TfL's skeleton argument for the Appeal at paragraph 36(e).
9 *Ibid,* paragraph 26.
10 *Ibid,* paragraph 68.
11 *Ibid,* paragraph 27.
12 *Ibid*, paragraph 28.

17. The predictability of ULL's immediate reaction to the Decision did not render it any less disgraceful. It launched a public attack on TfL, with a petition launched against the Mayor of London. It engaged in lobbying which was so effective that even the then Prime Minister, Theresa May MP[13], and the Conservative Party joined in the fray, with the Party launching its own petition, stating the Decision "would only cause massive inconvenience to millions of Londoners"[14].

18. In the words of the Chief Magistrate, ULL "tried to whip up a public outcry" when in fact it "had brought the refusal of the renewal on itself"[15].

19. Following its belated adoption of a policy of *mea culpa*, ULL asserted that it accepted many of TfL's findings. It updated its policies. It changed some of its senior leadership team. It claimed to have admitted past mistakes, and to have recognised that it had a flawed approach to TfL and regulation more generally. It announced steps that it said it had taken or planned to take which it claimed were aimed at transforming its corporate culture.

20. The lateness of ULL's concessions and the steps raised legitimate doubts as to the sincerity of the protested changes. By the time of the hearing of the Appeal, however, it appeared that TfL was prepared to give ULL the benefit of the doubt: it took a neutral stance as to whether ULL's appeal should be allowed

21. The evidence of TfL's Director of Licensing, Regulation and Charging, Ms. Helen Chapman[16], was that it was difficult for TfL to assess ULL's changes to its corporate culture and approach, because they would take time to become embedded within the business. The changes remained areas of uncertainty for TfL, in respect of ULL's future conduct[17]. An assessment of them – whether ULL's reformation was sincere or simply window-dressing, how effective were the changes and for how long they would last – was something necessarily to be judged at the conclusion of the 15-month 'test' period.

22. The Chief Magistrate found Ms. Chapman's concerns to be "perfectly understandable"[18]. She identified the question for her Court as "whether ULL can be trusted when it says it has changed and whether it will maintain the changes when these proceedings drop away"[19]. She accepted she too had "concerns" about granting a licence, which were assuaged to a considerable extent by the evidence of Ms. Laurel Powers-Freeling[20], but not to the extent to persuade her to do anything more than grant the Probationary Licence.

23. An explicit reason given for granting the Probationary Licence was "to check out the new arrangements". which must include checking whether ULL has complied with the Conditions during the probationary period and whether the Conditions have been effective in embedding change within the company.

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13 Interview with the BBC, 28 September 2017: https://www.bbc.co.uk/news/uk-politics-41431847
14 Which remains online even today: https://www.conservatives.com/londonerswantchoice
15 Judgment, paragraph 20.
16 Third Statement, paragraph 7.
17 *Ibid*, paragraph 8.
18 Judgment, paragraph 32.
19 *Ibid*, paragraph 15.
20 *Ibid*, paragraph 16.

24. Such was the egregiousness of Uber's conduct that the Conditions included Condition 6, which explicitly forbade ULL from circumventing any of its obligations as a licensed London PHV operator, or circumventing or interfering with any arrangements made by TfL in relation to these obligations, including such obligations or arrangements as apply to applicants for or holders of PHV driver licences or PHV licences.

25. To the best of this firm's knowledge, an express condition prohibiting a regulated entity from circumventing its licensing and other regulatory obligations is without precedent. It is a measure of how narrowly ULL was found to be fit and proper that it was thought necessary to reinforce what should ordinarily go without saying, by the imposition of a condition so worded.

26. The LTDA appreciates that TfL, as regulator, will have had direct experience of ULL's corporate culture and approach since the grant of the Probationary Licence.

27. For instance:

    (1) TfL will (or should) have received at least two independently-verified assurance procedure reports from ULL in accordance with Condition 4.

    (2) When significant or material changes were made to ULL's operating model, systems or processes that might affect regulatory compliance[21], TfL will (or should) have received at least 28 days' advance notice thereof, in accordance with Condition 5.

    (3) TfL should have received written notification of the outcome of all investigations concerning any regulatory breaches or other infringements of law by an Uber Company, if and to the extent that any Relevant Person (as defined) has been implicated in such conduct or found to be personally culpable for such breach or infringement, in accordance with Condition 8.

    (4) TfL will (or should) have received at least two reports on the effectiveness of ULL's complaints handling process, in accordance with Condition 12.

28. Furthermore, TfL will have had direct experience of interaction with ULL during the probationary period. Ms. Chapman gave evidence of ULL's historically combative approach to TfL, and correctly observed that if better communication and processes were to be developed, this would be by ULL's future conduct, not by on policies on paper.

29. We anticipate that TfL will have been carefully monitoring ULL's actions to see whether they live up to the many pages of polices and promises given in the lead-up to the Appeal. The results of this exercise will no doubt feed into TfL's consideration of whether it is satisfied that ULL is a fit and proper person to hold a London PHV's operator's licence, as required by s.3(a) of the Private Hire Vehicles (London) 1998 Act (as applicable to renewals as well as grants by virtue of s.15(5) of that Act).

21 Such as Uber's adoption of new driver terms effective as of 24 June 2019, which make substantial changes to the information provided to drivers prior to accepting bookings.

30. The *burden* of satisfying TfL that ULL is fit and proper at the point of determination of ULL's application to renew *rests on ULL*. This, it is submitted, is the plain effect of s.15(5) equating of renewals with grants.

31. It may be that ULL will purport to rely on the case of *Kaivanpor* v. *DPP* [2015] EWHC 4127 to suggest that the burden of proof somehow rests on TfL to establish that ULL has lost the quality of being fit and proper it narrowly was found to possess at the hearing of the Appeal. Should this line be taken, then the LTDA observes:

(1) *Kaivanpor* related to the Local Government (Miscellaneous Provisions) Act 1976 where, in contrast to the 1998 Act, grants and renewals are dealt with under different sections: for operator's licences, grants fall within s.55 whereas refusals to renew within s.62).

(2) *Kaivanpor* was a case attended by one party only.

(3) The reliance in *Kaivanpor* on *Muck It Ltd* v. *Merritt & Others* v. *The Secretary of State for Transport* [2005] EWCA Civ 1124 was misplaced, given that *Muck It* concerned the Goods Vehicles (Licensing of Operators) Act 1995, which implemented EC Directive 92/96, the relevant provision of which (Article 6, paragraph 2) explicitly places the burden of proof on the licensing body to withdraw previously granted authorisation.

(4) Where a probationary licence is granted, it is axiomatic that it is for the probationer to establish that over the probationary period it made out the required characteristic.

(5) Indeed, in its skeleton argument for the Appeal, ULL concluded[22]:

> *Overall, ULL submits that in light of all of the changes it has made, there is now sufficient evidence to satisfy the Court that ULL is a fit and proper person to hold a PHV operator's licence. Any further assurance that is needed in respect of the extent to which recent changes have been embedded and implemented can be provided proportionately by the grant of a short-term licence and the imposition of appropriate conditions.* ***ULL would welcome the opportunity to continue to demonstrate its fitness and propriety, and is committed to trying to do that every day.***
>
> (emphasis added)

(6) In a similar vein, Uber's IPO Prospectus issued on 26 April 2019[23] stated (at page 61):

> *..in June 2018, we were granted a license [sic] to operate in London on a 15-month term (instead of the usual five-year term). If we are not successful in complying with the terms of the 15-month license and, as a result, it is terminated or not renewed, we would likely appeal any such decision as we did in 2017.*

22 At paragraph 108.

23 https://www.sec.gov/Archives/edgar/data/1543151/000119312519120759/d647752ds1a.htm

32. We accept that, as a point of general principle (and without making any concession as to the particular circumstances of ULL), the grant of a probationary licence is one means open to a regulator, short of revocation. to deal with historical breaches on a proportionate basis. A probationary licence essentially tests whether promises are put into action.

33. A probationer knows (or should know) that its conduct during the probationary period will be subject to close and careful scrutiny. Compliance in that period should not be a cause for celebration: it is the bare minimum to be expected of any reasonably competent and sincere licence-holder. Non-compliance, on the other hand, should be a matter for serious concern. There can be very few, if any, justifications for squandering the last chance that probation provides a defaulting licence-holder.

34. Throughout the Appeal, the LTDA maintained that ULL had not established that it was fit and proper to hold a London PHV operator's licence. Even within the narrow field to which the LTDA's evidence was confined by the Court (Uber behaviour in controlled districts in respect of which an operator's licence has been refused (Reading and York)), it was clear that Uber had deliberately targeted areas where it had been refused a licence by the relevant authorities, even during the currency of the Appeal. It was submitted on behalf of the LTDA at the time[24]:

> *36. On one view, it could be said that Uber's conduct (deliberately targeting areas where they have been refused a licence) is insignificant by comparison with the catalogue of wrongdoing chronicled in the statement of Helen Chapman. An alternative perspective is that Uber's conduct is a flagrant defiance of the regulators who have refused to licence them.*
>
> *37. On any view, it is difficult to reconcile Uber's conduct with its boast that, being now reformed, it "does the right thing", and has been taught "the importance of partnership with the cities and towns in which we operate", and its commitment to "working with regulators to comply with the spirit and letter of the law": Dara Khosrowshahi [EX1/B/106/620].*

35. The fears identified by our client then have been shown to be entirely well-founded.

The recent convictions

36. On 31 July 2019, in a prosecution instigated by TfL, ULL was convicted by Westminster Magistrates' Court on 31 July 2019 on guilty pleas for two counts of causing or permitting drivers to use motor vehicles on a road without the requisite insurance and for two counts of failing to keep records, for which it was fined a total of £28,800 plus costs and victim surcharge.

37. It beggars belief that ULL could have contrived to acquire these convictions within the period of the Probationary Period, despite all that had been said and done at the Appeal, including the imposition of the raft of bespoke Conditions designed to protect ULL from itself and its ultimate parent.

24 Written Submissions of 21 May 2018.

38. We note that on 3 August 2019, a piece appeared on Sky News that "Uber's hopes go into reverse in new TfL battle for London Licence"[25]. Mark Kleinmen, Sky's City Editor, reported that rather than being granted a 5 year licence on renewal, Uber "is understood to be resigned to getting a further temporary extension", with "One source close to the company" claiming that "a further 15-month licence "would not be a disaster"".

39. That news report was an attempt at expectation management on the part of Uber. It must have been plain at the time of the convictions (if not before) that ULL's conduct had fallen well short of what it had promised the Chief Magistrate, and what she had demanded. It must have been plain that ULL was in peril of its licence not being renewed. We do not know if the language "resigned to" is that of Mr Kleinman or of an individual within Uber, but "resignation" to the grant of a yet further probationary licence seriously underestimates the exceptionality of one being granted in the first place.

Developments concerning the 2016 data breach

40. The 2016 data breach and its late reporting was an issue on the Appeal, and fed into the Chief Magistrate's judgment.

41. It of note that despite ULL's perilous licensing situation and its professed intention to "do the right thing", even by the time of the Appeal, ULL was not minded to make specific notification of the data breach to customers affected in this country. It had protested that the data loss was not sufficiently sensitive, and, other than making postings on its App, it did not plan to send any additional individual communication to those affected[26]. Ms. Chapman did not consider this to be satisfactory. It seemed to her that ULL "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". She said that "This struck me as insufficient and unsatisfactory and raised the prospect that ULL might be seeking to protect is own reputation above securing the best interests of its customers"[27]. ULL did not agree with these "suggestions"[28], although it did not take the opportunity to advance any reason why it had not made individual communications to the UK victims of the breach.

42. In the course of correspondence with TfL, ULL had asserted that the Netherlands-domiciled Uber BV was the data controller of all non-US driver and passenger data[29], and for this reason Uber BV rather than ULL was leading the investigation into the data breach[30]. Unsurprisingly, this led TfL to question[31] how ULL satisfied itself as to the safety and security of UK driver and customer data.

43. As TfL will be aware given its ongoing liaison with her office[32], on 26 November 2018 the Information Commissioner imposed a monetary penalty on ULL and associated Uber entities of £385,000 under what was s.55A Data Protection Act

25 https://news.sky.com/story/ubers-hopes-go-into-reverse-in-new-tfl-battle-for-london-licence-e11776430
26 First statement of Helen Chapman, paragraph 288.
27 *Ibid*, paragraph 289.
28 Third statement of Thomas Elvidge, paragraph 17.
29 First statement of Mr Elvidge, paragraph 130(g), and see further ULL's skeleton argument for the Appeal at paragraph 18.
30 Uber Submission to TfL, 11 January 2018, paragraph 4.5.
31 Letter of 28 November 2017.
32 Third statement of Ms. Chapman, paragraphs 10-11.

1998. To give that penalty context, the maximum penalty that could be imposed given the timing of the breach was £500,00 (maximum penalties have now significantly increased upon the coming into force of the GDPR).

44. TfL will appreciate that under what was s.55A of the 1998 Act a monetary penalty notice (1) could only be served on a data controller; (2) if there had been a serious contravention of the data protection principles in respect of personal data in respect to which he is the data controller; (3) if the contravention was of a kind likely to cause substantial damage or substantial distress; and (4) if the contravention was either (a) deliberate, or (b) if the data controller knew or ought to have known that there was a risk that the contravention would occur, and that such contravention would be of a kind likely to cause substantial damage or substantial distress but failed to take reasonable steps to prevent the same.

45. The monetary penalty notice[33] makes instructive reading.

46. Firstly, the Commissioner's view is that Uber UK (which consists of ULL and Uber's other UK off-shoots Uber Britannia Limited ("UBL"), Uber Scot Ltd and Uber NIR Ltd) was a joint data controller with Uber BV of the personal data of at least the users of Uber's services in the UK[34].

47. Secondly, Uber would not identify to the Commissioner data that was available to the hackers in the 2016 data breach but was not in fact accessed (the hackers downloaded the content of 16 files but information within over 100 cloud-based "buckets" was accessible to them). The Commissioner noted[35] that it was "poor data protection practice to be unable or unwilling to identify whether and what personal data was contained in those buckets", and given the "huge volume" of data the buckets contained, it was highly likely that they contained some personal data.

48. Thirdly, the Commissioner noted[36] the failures on the part of Uber at the time to notify the individuals whose personal data had been compromised of the breach, or to monitor their accounts, or flag them for additional fraud protection.

49. Fourthly, the Commissioner found (as was necessary for the making of a monetary penalty) that the contraventions were of a kind likely to cause substantial distress[37]. The data breach put at risk personal data of those kinds that would be useful in terms of increasing the likelihood of social engineering via phishing[38] or smishing[39] attempts, causing substantial distress. The contravention was of a kind that exposed personal data to the risk of cyberattack, as opposed to the accidental loss of data. Cyberattack inevitably involves nefarious and criminal purposes, and a cyberattack that exposed individuals to such consequences was of a kind likely to cause substantial distress. The Commissioner found "The delay in reporting the breach is likely to have compounded the distress affected individuals suffered"[40].

33 https://ico.org.uk/media/action-weve-taken/mpns/2553890/uber-monetary-penalty-notice-26-november-2018.pdf
34 Monetary Penalty Notice, paragraph 6.
35 Monetary Penalty Notice, paragraph 19.
36 *Ibid,* paragraph 28(4).
37 *Ibid,* paragraph 29.
38 I.e. the perpetration of online fraud in order to glean personal information from individuals, esp. by impersonating a reputable company; to engage in online fraud by deceptively 'angling' *for* personal information.
39 I.e. phishing conducted by SMS.
40 Monetary Penalty Notice, paragraph 29(3).

50. Fifthly, the Commissioner found that Uber knew or ought reasonably to have known that there was a risk of contraventions of a kind likely to cause substantial distress and failed to take reasonable steps to prevent the same.

51. Sixthly, an aggravating feature was that Uber did not notify the ICO of the data breach upon learning of it. Instead the Commissioner became aware of the breach through media reports[41].

52. In announcing the monetary penalty, the ICO's Director of Investigations, Steve Eckersley, said[42]:

> *This was not only a serious failure of data security on Uber's part, but a complete disregard for the customers and drivers whose personal information was stolen. At the time, no steps were taken to inform anyone affected by the breach, or to offer help and support. That left them vulnerable.*
>
> *Paying the attackers and then keeping quiet about it afterwards was not, in our view, an appropriate response to the cyber attack.*
>
> *Although there was no legal duty to report data breaches under the old legislation, Uber's poor data protection practices and subsequent decisions and conduct were likely to have compounded the distress of those affected.*

53. We are not aware that ULL has sought to appeal against the monetary penalty.

54. ULL's case at the Appeal (against the Decision) was, in essence, that it was not a data controller of UK customers or drivers, that the data breach was the fault of Uber entities other than it[43], that its culpability was limited to "limited visibility of, and involvement in, the global handling of the issue", and that it had taken "steps to address that identified weakness in its relations with other companies within the Uber Group", in particular by the development of the Compliance Protocol[44].

55. That substantially understated ULL's responsibilities both historic and ongoing in relation to data control. Whether deliberate or inadvertent, this is troubling when it has now been confirmed that Uber UK (of which ULL is a part) is in fact the joint data controller of the personal data of the users of Uber's services in the UK. The 2016 data breach insofar as it related to those users, far from being the fault of other entities, has been found to have been caused by the failure of ULL and others to prevent it. That data breach has been found to have been of a kind likely to have caused substantial distress, and to have been aggravated by failures to address the problem in a timely fashion.

56. We suggest that not only is TfL owed explanations as to why ULL persistently sought to avoid or minimise its responsibility for control of personal data relating to UK customers and drivers, and the serious breach of the data protection principles relating to the same, but it behoves ULL to set out what it is doing to rectify the situation over and above Conditions 3, 5(a) and 7(a), which - in the light of the ICO's ruling - plainly did not go far enough.

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41 *Ibid,* paragraph 34(1).

42 https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/11/ico-fines-uber-385-000-over-data-protection-failings/

43 Skeleton argument, paragraph 101.

44 *Ibid*, paragraph 103.

57. In particular, TfL will be doubtless seeking an explanation from ULL as to the basis on which, over many years, it wrongly asserted that it was not a data controller of UK passenger and data.

58. This seems to be a bold interpretation for ULL ever to have advanced, given its statutory obligations to keep at its operating centre in London (1) a record in the prescribed form of the private hire bookings accepted by it there, (2) before the commencement of each journey booked at the operating centre, to enter into that record the prescribed particulars of the booking, and (3) to keep there such records as may be prescribed of particulars of PHVs and their drivers which are available to it for carrying out the bookings accepted at the centre (s.4(3)(b)-(d) of the 1998 Act). The prescribed particulars include the name of the person for whom the booking is made or other identification of them, the agreed time and place of collection, and the main destination specified, and the name of the driver carrying out the booking or other identification of them. This is self-evidently personal data.

59. We note that ULL only registered as a fee payer with the ICO on 10 July 2015 (registration number ZA127670[45]), so over 3 years after it launched in London[46]. As at today's date, the nominated data protection officer is a Mr Trueblaan, based in Amsterdam. UBL[47], Uber Scot Ltd[48] and Uber NIR Ltd[49] did not register until 21 December 2018, presumably in response to the Information Commissioner's determination. The data controller for each is a Mr Hania, who gives a London address but a Dutch telephone number and who appears to be based in The Hague[50].

60. TfL may not be aware of the submissions made on behalf UBL (part of what the ICO considered to be Uber UK) to the Licensing Panel of Brighton & Hove City Council on 23 April 2018, when that Panel was considering UBL's application to renew its PHV's operator's licence for the Council's area. Leading Counsel for Uber is minuted[51] as stating:

> *3.71 Mr Kolvin referred to the data breach which had occurred in November 2016 in the USA. It did not extend to financial information, it was names and emails. Individuals in the USA did not report the breach to regulators as they clearly ought to have done. Those individuals were no longer with Uber. He stated that since that had occurred the new CEO had been working with colleagues across all branches of Uber's operation to seek to ensure that further breaches did not occur and to ensure that measures were in place to ensure that failure to disclose could not happen again.* ***The Information Commissioner's Office (ICO), had commented that it had not affected UK citizens.*** *UBL had not known of the breach. When it had learnt of it, it had done a number of things to address it. Firstly, it had notified licensing authorities,* ***it had notified the ICO****, it had communicated with National Cyber Security Centre, it had put information on line and it had responded to queries from members of*

45 https://ico.org.uk/ESDWebPages/Entry/ZA127670
46 Launch in or around early July 2012: https://www.theguardian.com/technology/appsblog/2012/jul/02/apps-rush-uber-google-analytics
47 https://ico.org.uk/ESDWebPages/Entry/ZA482425
48 https://ico.org.uk/ESDWebPages/Entry/ZA482443
49 https://ico.org.uk/ESDWebPages/Entry/ZA482440
50 https://www.linkedin.com/in/simonhania/
51 https://phantom.brighton-hove.gov.uk/mgAi.aspx?ID=66346

> *the public about the breach. It had been wrong of Uber in the USA not to publicise the breach when it had occurred. But Uber gave the reassurance that here and internationally the integrity of customer data was given the highest priority. It was working with regulators to ensure compliance.* ***In terms of data control this was in the Netherlands because the data was with UBV and ICO was happy with that****. In terms of the relationship this had all now been strengthened with the arrival of the new CEO to ensure no repeat of that past breach.*
>
> (our emphasis)

61. The disparities between what Uber was telling other regulators about the ongoing ICO investigation and what the ICO actually found are further matters which we suggest TfL may wish to explore.

62. It is instructive to contrast the approach taken to the data breach in other jurisdictions. On 26 September 2018, Uber entered into a settlement agreement with all 50 states of the United States of America and the District of Colombia[52]. As well as requiring it to pay US$148m to the Attorneys General of those states and commonwealths[53], the settlement (by way of Final Judgment and Permanent Injunction) imposed injunctive relief on Uber which, *inter alia*, required it[54] to comply with the reporting and notification requirements of California Civil Code, section 1798.82. That provision of the Code[55] requires data breaches to be notified to affected individuals in a prescribed form, setting out in plain language information under the headings "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information.". We ask why ULL has not proposed taking similar steps in this jurisdiction if it is, indeed, resolved to "do the right thing"?

63. If Uber's persistent protestations that it is no more than a technology company[56] that does not itself provide transportation services[57] are to be taken at face value, then at the very least, one would expect Uber and its regulated offshoots to take data protection and security seriously. It seems extraordinary that ULL has not made individual communication to the UK victims of the data breach. It is perhaps only because this omission was lost amongst a plethora of serious wrongdoing that it received less attention from TfL and the Court than it otherwise would have.

Fronting by drivers

64. TfL may be aware of media reports[58] of the settlement in June of this year by Uber of civil claims brought against UBL by two victims of separate sexual assaults perpetrated by the same driver of an Uber vehicle, one Naveed Iqbal. The first assault was committed on 6 December 2015, the following a week later on 13

52 A link to the final judgment can be found here: https://oag.ca.gov/news/press-releases/california-attorney-general-becerra-san-francisco-district-attorney-gasc%C3%B3n

53 By clause 19.

54 By clause 9.

55 https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1798.82

56 See for instance UTI's IPO Prospectus at Note 1 to the Consolidated Financial Statements, page F-11: "The Company is a technology company that is powering movement in countries around the world…" https://www.sec.gov/Archives/edgar/data/1543151/000119312519120759/d647752ds1a.htm

57 As per its current UK Rider Terms, Part 1, paragraph 4: https://www.uber.com/en-GB/legal/terms/gb/

58 For example: https://www.bbc.co.uk/news/uk-england-leeds-48790934

December 2015. On each occasion, Iqbal had used the log-in details of his brother, who was out of the country at the time, to pass himself off as an Uber driver. The solicitor for the claimants, Emma Crowther of Irwin Mitchell, is quoted as saying[59]:

> *It is even more concerning that if Uber had properly investigated the alleged assault suffered by our first client then we believe the driver would not have been free to go on and pick up the second woman just a week later, during which it is reported he escalated in his abusive behaviour.*

65. We ask what - if anything - has ULL done to ensure that access to that App is not simply available to all and sundry who might have been told a driver's password?

66. The Leeds case continues a troubling theme of persons driving vehicles hailed on the Uber App who are not who they seem. TfL will doubtless be aware of the serious incident outside the Natural History Museum on 7 October 2017, when one Jumar Omar drove an Uber vehicle into a crowd of tourists, injuring 11 persons. Omar, it transpired, had no right to work in this country. He had obtained a replacement passport in another person's name to obtain a driving licence. He was on-boarded by ULL using false documents supplied by him including a false London PHV driver's licence. At the time of the incident he was uninsured. Upon sentencing Omar to a 15 month term of imprisonment for offences including dangerous driving, Mr Recorder Oliver Sells QC is reported[60] as saying:

> *The public is entitled to assume that the driver of an Uber car is who he says he is and they have proper qualifications - licence, insurance and the necessary paperwork.*

67. The Judge's statement of the public's *entitlement* is of course correct - and yet time and again, Uber has demonstrated that the public can have no confidence in the that entitlement being fulfilled by it. Its approach to the integrity of its on-boarding process and to access to the Driver App appears to be *laissez-faire* to the point of negligence.

Insurance

68. Media reports of Omar's conviction stated[61] that "Any of those injured would not have been able to claim compensation from Omar's insurance, or Uber". We do not know what claims have been made and - if so - what Uber's response to those claims have been, but a company that professes to "do the right thing" should - we suggest - have been taking urgent and immediate steps to make immediate and full recompense to those injured.

69. The emergence of the insurance and record-keeping offences raises serious questions as to ULL's compliance generally, and go to the centrally important issue of whether ULL is by its conduct putting public safety at risk.

70. As to the particular issue of lack of insurance, we submit this is squarely a public safety issue: members of the public would rightly not consider an uninsured vehicle to be safe. Apart from the consequences that directly flow from being the victim of

59 https://www.irwinmitchell.com/newsandmedia/2019/june/uber-agrees-landmark-settlements-with-women-who-reported-being-sexually-assaulted-by-taxi-driver

60 https://www.dailymail.co.uk/news/article-6440581/Uber-driver-sparked-major-terrorist-alert-driving-uninsured.html

61 *Ibid.*

an accident involving an uninsured vehicle, the driver's failure to have the correct insurance in place demonstrates a deliberate or reckless contempt for compliance with the law, and has long been treated as indicative of a more broad unfitness. This is doubtless why those who seek to licence vehicles as PHVs are obliged to satisfy the regulator of the existence of insurance (see s.7(2)(b) of the 1998 Act).

71. We are alive to the irony that, of all London PHV operators, it was *ULL* who in 2016 brought a challenge to the new insurance requirement in amendments to the Private Hire Vehicles (London Operators Licence) Regulations 2000. But for ULL's challenge, those amendments would have required PHVs to maintain continuous hire and reward insurance, and to have details of such insurance displayed within vehicles. As you are aware, TfL conceded ULL's challenge because of an acceptance that in taking the decision to impose the insurance requirement it had not taken into account the extent to which claims against the Motor Insurers' Bureau would in fact provide passengers with equivalent protection[62]. We understand that TfL are reviewing the position: it seems to this firm that, as Mr Recorder Sells QC said, members of the public are entitled to assume that PHVs are *properly* insured, rather than having to fall back on arguments founded *Bristol Alliance Limited Partnership* v . *Williams* [2013] Q.B. 286 or going through the hoops of a claim against the MIB. Of course, ULL's apparent determination that its drivers should not have to obtain or prove that they have continuous hire and reward insurance has been a contributing factor to the problems in which it now finds itself.

72. A running theme has Uber's inability to appreciate what is "the right thing" in a regulated sector with public safety at its core. Uber has instead displayed a fixation with corner-cutting (in its own words, "always be hustlin'"[63]), where it has sought to avoid the usual responsibilities of a fit and proper operator by whatever creative means it can conjure. The scheme of eye tests by post was a memorable example at the Appeal. It does not appear that Uber has stopped (or can stop) "hustlin'": it continues to field drivers who are not who they say they are, not possessing the insurance the public is entitled to assume they possess, with scant regard to data protection and data security, and its responsibilities when data breaches occur.

Uber's "regional" model is both unlawful and demonstrative of its attitude to regulation

73. On 14 February 2018 Uber announced its unilateral decision to divide the UK into 9 'regions', each of which spans several different licensing districts, with their own standards and local licensing requirements.

74. UBL told drivers on the Uber platform that if they hold a vehicle/driver's licence from any licensing authority within one of Uber's so-called regions, they will have exclusive rights to work as Uber drivers anywhere within that region.

75. Uber's "London" region includes not just London as defined in the 1998 Act[64] (the area of TfL's authority) but a further 49 other local authority areas (or parts thereof)[65] ("the London Region").

62 See *R (oao Uber London Limited)* v. *TfL* [2017] EWHC 435 (Admin) at [42].
63 https://www.theguardian.com/technology/2017/mar/07/uber-work-culture-travis-kalanick-susan-fowler-controversy
64 The metropolitan police district and the City of London (including the Temples): s.36.
65 See ULL's Response to the LTDA's written submissions dated 11 June 2018 served in the Appeal, fn 1.

76. Uber only offers trips beginning in the London Region to drivers licensed by TfL[66]. Uber previously held (through UBL) 1976 Act operator's licences in some of the 49 local authority areas now subsumed into the London Region; these licences are now not being used.

77. The LTDA submits that:

(1) the regional model is unlawful;

(2) the unlawfulness of the regional model is a relevant consideration for TfL in determining ULL's application to renew its London PHV operator's licence;

(3) by incentivising or otherwise encouraging Uber drivers to work in areas in which neither the drivers nor vehicles are licensed, Uber undermines local licensing control, with safety implications; and

(4) if TfL is minded to renew ULL's licence, it should condition it so far as is necessary to meet the erosion of localism in the controlled districts that lie within Uber's "London Region" and in which ULL does not hold an operator's licence.

78. It is important to recognise that the statutory provisions applying to PHV drivers and vehicles are materially different from the provisions applicable to PHV operators.

79. The relevant scenario here is of Uber vehicles and drivers, licensed by TfL, undertaking journeys which are requested at a point when those vehicles and drivers are shown on Uber's App as being available in an area where Uber is not licensed as an operator.

Vehicles

80. The owner of a vehicle may not use it as a PHV in a controlled district unless the vehicle is licensed as a provincial PHV under s.48 of the 1976 Act: s.**46(1)(a)**.

Drivers

81. A PHV may not be driven in a controlled district otherwise than by someone licensed under s.51: s.**46(1)(b)**. (It is also an offence for the owner of a vehicle to employ as a driver someone who is not so licensed: s.**46(1)(c).**

82. No offence under s.46(1)(a), (b) or (c) is committed, however, if a *driver's licence* and a *vehicle licence* issued in a different controlled district (or in London) are in force: s.75(2) and (2B).

83. The so-called "right to roam" of PHV drivers derives from s.75(2) and (2B). It means that licensed drivers and vehicles may lawfully *undertake journeys* (not "accept bookings") "which ultimately have no connection with the area in which they are licensed" (*per* Latham L.J. in *Shanks* v. *North Tyneside BC* [2011] LLR 706).

84. The right is not unqualified. PHV drivers and vehicles may not solicit custom, and may only fulfil a booking accepted by an operator licensed by the same authority as

66 Mr Elvidge's 5th statement, paragraph 6(a)(i).

licensed them: *Dittah* v . *Birmingham City Council* [1993] RTR 356. Thus all 3 licences (operator's, driver's and vehicle) must be issued by the same authority: *Dittah.*

Operators

85. In respect of the provinces, s.80(1) of the 1976 Act provides:

> *"operate" means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle.*

86. In respect of London, s.1(1) of the 1998 Act provides:

> *"operate", in relation to a private hire vehicle, means to make provision for the invitation or acceptance of, or to accept, private hire bookings in relation to the vehicle.*

87. A provincial operator may only make provision for the invitation or acceptance of PHV bookings in the controlled district in which he is licensed: **s.46(1)(d)** of the 1976 Act, applying s.80(1) & (2).

88. A London operator may only make provision for the invitation or acceptance of bookings in London: s.2(1). Bookings may only be accepted in an operating centre (s.4(1)), which must be in London (s.3(2)).

89. S.75 of the 1976 Act does not provide an exemption for operators from s.46(1)(d). Nothing in the 1998 Act provides an exemption for operators from ss.2(1), 3(2) or 4(1). So, there is no equivalent exemption to that provided for drivers and vehicles in the respective Acts (the 1998 Act contains provisions with the equivalent effect to s.75(2B)). Thus, whilst drivers and vehicles may lawfully undertake *journeys* "which ultimately have no connection with the area in which they are licensed" (*Shanks*), *provision for the invitation or acceptance of bookings* may only be made in the controlled district in which the operator is licensed.

90. Whether or not provision has been made in breach of section 46(1)(d) is a question of fact. The following guidance emerges from the cases:

- "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": *Kingston Upon Hull City Council* v. *Wilson* (1995) WL 1082181, per Buxton J.

- "There could well be provision for invitation of bookings in one place and for acceptance in another": *East Staffordshire BC* v. *Rendell* (1995) WL 1084118, per Simon Brown L.J.

- "As the authorities clearly show, the [main] question is not where the act of accepting any particular booking or bookings take place, but where the provision is made": *idem*

- "The determining factor is not whether any individual booking was accepted, let alone where it was accepted, but whether the person accused has in the area in question made provision for the invitation or acceptance of bookings in general": *Windsor and Maidenhead* v. *Khan* [1994] RTR 87, per McCullough J.

Invitation of bookings

91. Uber customers make bookings using the Uber Rider App on a smartphone. The App is licensed by Uber BV. When customers activate the Uber Rider App, they are immediately presented with a map of their local area, showing the position of each nearby Uber vehicle that is currently available for hire. Each vehicle is continuously advertising its availability for hire and inviting potential customers in the vicinity to commence the process of booking.

92. *Rose v Welbeck* [1962] 1 WLR 1010 was a decision on the prosecution of a driver for plying for hire: but the court's analysis of the facts, and discussion of what amounted to an invitation to book, are relevant. There, a PHV vehicle was parked in a public street, bearing the inscription "Welbeck Motors, Minicabs" on both its sides, together with a telephone number. Winn J said: "At the very lowest, the evidence in the present case discloses behaviour and appearance on the part of this vehicle which amounts to an invitation:

> '*Get in touch one way or another with my owner and see whether he is willing for you to take me as a vehicle which you are hiring*.'"

93. Lord Parker CJ said: "The vehicle was saying:

> '*Not only do I*,' if I may personify the vehicle, '*recommend you to Welbeck Motors ltd., where you can hire a minicab, but further I am one of those minicabs and I am for hire.*'"

94. In terms of 'invitation to book' there is no meaningful distinction to be drawn between the invitation made by vehicles displayed on the Uber Rider App, and that made by the parked *Welbeck* vehicle: the former is merely a modern, internet-assisted manifestation of the latter.

95. By exhibiting (on the Rider App) their geographical location, and their availability for immediate hire, Uber drivers and vehicles self-evidently invite bookings for their services. Provision for that invitation is made by 'Uber'; and it is made in many regions where Uber is unlicensed. Uber uses surge pricing to encourage 'out-of-town' Uber drivers, to come to areas where it is not licensed, and activate the Driver App.

Relevance of the unlawful model

96. The inherent incompatibility of ULL's regional model with s.41(1)(d) of the 1976 Act is relevant to TfL's consideration of ULL's application to renew its licence. Parliament cannot be taken to have intended that a licence be granted to an operator for the purposes of an unlawful operation.

97. The contended illegality is a matter which we submit can and should be addressed. That it has not been fully ventilated before any court to date does not constitute good reason for TfL not addressing the matter in its determination of ULL's application to renew. The proposals for legislative reform should not prevent TfL giving full consideration to our contention that what is happening is unlawful *because, on the Uber model, ULL is making provision for the invitation of bookings for PHVs in areas in which neither it nor UBL licensed to do so.*

Local Licensing Control

98. Uber's conduct is in no way a 'technical breach' of the statutory provisions. It goes to the heart of the licensing regime and its purposes. The courts have said that "the hallmark of the licensing regulatory regime is localism"[67], and that "that the authorities responsible for granting licences should have the authority to exercise full control" over "all vehicles and drivers being operated ... within its area."[68]

99. The undermining of local licensing control by cross-border hiring is of nationwide concern. In its policy paper prepared as a submission to the DfT's Taxi and Private Hire Task and Finish Working Group, TfL identified cross border hiring as giving rise to these issues:

(1) **public safety risks** as drivers enforced against in one area can apply to be licensed by another;

(2) **enforcement issues**, as licensing authorities lack adequate powers to tackle infringements committed by out of town drivers;

(3) **undermining of local licensing standards**;

(4) **complaints** are harder to make to the appropriate authority, which can lead to the loss of vital intelligence.

100. We recall ULL's response on being asked by Ms. Chapman to reconsider the wide reach of the London Region[69]. In particular, she said:

> *… 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.*
>
> *ULL sent a reply by email on 12 February [2018] stating that it would not be altering its geographical boundary further*."

101. Uber's position remains unchanged, notwithstanding TfL's public position in relation to the issues arising from the undermining of local licensing control by cross-border operations.

102. TfL may be aware of the request made of Uber by Brentwood Borough Council to either remove Brentwood from Uber's self-defined "London Region" or to apply for a PHV operator's licence in Brentwood. Uber's response was that it would not be taking either step because of the Government's ongoing consideration of amending the law on cross-border hiring[70].

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67 *Blue Line Taxis* v. *Newcastle upon Tyne City Council* [2012] EWHC 2599 (Admin).
68 *Shanks* v. *North Tyneside Borough Council* [2001] EWHC 533 (Admin).
69 First witness statement, paragraphs 311-316.
70 https://www.essexlive.news/news/essex-news/uber-refuses-withdraw-brentwood-after-3175632

103. This, we suggest, is not the conduct of an entity, on probation, that wishes to "do the right thing". Having significantly magnified the issues cross-border hiring causes in the Home Counties by its own unliteral conduct, Uber now prays in aid the passage of measures proposed to prevent the issues arising from that conduct as somehow justifying its continuance.

Uber's "on demand" model substantially adds to congestion and pollution in London and compromises the safety of Londoners

104. We need not recite in this letter the issues of congestion and resulting pollution caused by the over-supply of PHVs, which led to the removal of the exemption from liability to pay the congestion charge in Central London from PHVs (save for those designated as wheelchair-accessible vehicles). The decision was given effect to by the Greater London (Central Zone) Congestion Charging (Variation) Order 2018, and has survived judicial review challenge: *R. (oao Independent Workers Union of Great Britain)* v. *Mayor of London* [2019] EWHC 1997 (Admin).

105. Doubtless the implementation of the 2018 Order has had the effect of bringing about a reduction of PHV numbers within the Congestion Charging Zone by simple application of the laws of economics, applicable not just to PHVs on the Uber model but generally.

106. However, we feel there is a more nuanced point to be made about congestion (and resulting pollution) in relation to the Uber model.

107. As TfL will be aware, the Uber model is an "on demand" only model, where advance bookings are not accepted (Uber's so-called "scheduled ride" is no more than a delayed immediate hail).

108. Uber has no direct control over when and where its drivers work[71], and instead Uber uses surge pricing to encourage drivers to travel to areas where there is, or is anticipated to be, demand for immediate work. Uber's model requires a pool of available drivers and vehicles within the vicinity of those who might need them. Work is generally allocated to the nearest vehicle.

109. The model actually *encourages* the clustering of Uber vehicles in places where immediate hails are likely: the busiest and most congested areas of London.

110. Requests for drivers' services are provided via the Driver App, with a time limit to respond whatever their position in traffic. Destinations are provided by the Driver App, with significant over-reliance on SatNav directions being provided by that device.

111. These features of the Uber platform in particular aggravate the congestion (and resulting pollution) generally caused by PHVs. They also add to public safety issues as Uber drivers are compelled react within very short time periods to immediate hails (sometimes when POB and soon to clear) and to rely on SatNav to undertake journeys in London's complex roadscape that they had no opportunity to plan.

71 Clause 7b of its latest Driver Terms, effective 24 June 2019, provides "You alone decide if, when, where and for how long you want to use the Driver App…".

112. We detailed the public safety issues caused by Uber's "on demand model" in our letter of 23 March 2017[72]; the experience of our client and its members is that this conduct continues on London's streets unabated despite Uber's protestations of change. Whilst Uber has recently made changes to its App with an eye on improving its employment case, it does not appear to have applied any thought to how the App might be made safer: so for instance, not allowing driver interaction whilst the vehicle is moving.

113. We make the point that the very purpose of the two tier system is to confine the undertaking of immediate hails to those who had passed the rigorous requirements of the Knowledge, and whose vehicles (unlike PHVs) comply with the Conditions of Fitness, and thus are easily identifiable as hackney carriages (and therefore are easily regulated), have tight turning circles (so they can safely perform U-turns), have partitions and are disability-friendly and wheelchair accessible.

Uber's conduct subverts fair competition

114. It an integral to the functioning of most licensing regimes that the regulator must be able to repose *trust* in those that they license.

115. See for example *CC&C Ltd* v. *HMRC* [2014] EWCA Civ 1653, where, in considering a regime where HMRC will only authorise persons to carry out an excise business where they "can demonstrate that they are fit and proper" to do so, Underhill L.J. said at [46]:

> *The statute describes the right to trade in duty-suspended goods as a "privilege", and the nature of the business is such that it is a privilege that should only be accorded to those whom HMRC believe they can trust*

116. In her Judgment, the Chief Magistrate recognised[73] the central importance of trust:

> *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.*

117. Regulated entities that are not prepared to compete fairly with others undermine the trust that the regulator must repose. A clear explanation of why is set out in the judgment of the Upper Tribunal *Arnold Transport & Sons Ltd* v. *DOENI* [2014] UKUT 162 (AAC), dealing with the HGV operator licensing regime:

> *12. The Tribunal has stated on many occasions that operator's licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, must feel able to trust the operators to comply with all relevant parts of the operator's licensing regime. In addition other operators must be able to trust their [competitors] to comply, otherwise they will no longer compete on a level playing field. In our view this reflects the general public interest in ensuring that Heavy Goods Vehicles are properly maintained and safely driven.* ***Unfair competition is against the public interest because it encourages operators to cut corners in order to***

72 See paragraph 49.
73 Paragraph 15.

remain in business. Cutting corners all too easily leads to compromising safe operation.

13. It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold and operator's licence will be called into question...

16. ***The impact of unfair competition is insidious in that it gradually and subtly undermines the confidence of compliant operators that their competitors will comply with the regulatory regime and thus compete fairly.*** *What matters is the perception that other operators are competing unfairly not whether they are achieving any benefit as a result. Once rumours, of unfair competition spread, (or clear evidence of it become apparent), the assumption will be made that it must be advantageous because there would be no point in running the risks involved if it was not...'*

(our emphasis)

118. Uber's conduct evinces a fixed and continuing determination on its part to engage in unfair competition.

119. This includes:

(1) Uber's founding philosophy of disruption, confrontation and hostility to regulation, which we suspect continues unabated today.

(2) Uber's avoidance and undermining of regulation, including corner-cutting, the deployment of lobbying, public campaigns against regulators, and the use of tools such as Greyball and Ripley.

(3) Uber's unilateral drawing of 9 super-regions across the country as a more convenient arrangement for its own commercial purposes than promoting local control.

(4) Uber's questionable taxation arrangements, which include a US$6.1bn write-off in the Netherlands which is now the subject of an emerging political scandal in that country[74].

(5) Uber's unwillingness to enter into suitable insurance arrangements.

(6) Uber's determination to deprive its drivers of their rights *qua* workers, now the subject of ongoing litigation.

(7) Uber's undermining of the two-tier system by overtly seeking to directly compete with hackney carriages.

74 https://uk.reuters.com/article/uk-netherlands-uber-tax/dutch-minister-i-did-not-have-contact-with-uber-on-tax-plan-idUKKCN1VN1EV

Uber has demonstrated that it is essentially unregulatable

120. As participants in the Appeal, our client is very well aware of the considerable time and effort TfL invested in its role there as respondent. The volume and detail of TfL's evidence speaks for itself.

121. Despite criticism from many quarters (including from our client), TfL were willing to give ULL the benefit of the doubt and take a neutral stance at the Appeal hearing.

122. TfL engaged with ULL and in particular agreed a comprehensive suite of Conditions in an attempt to govern future conduct, a matter on which the Chief Magistrate placed significant weight.

123. Regardless of the fact that our client exhorted TfL to resist ULL's appeal, it cannot be suggested that TfL took anything other than a serious and diligent approach to its duty to promote public safety by proportionate means.

124. ULL can (or should) have no complaint at all about TfL's conduct of the Appeal. ULL can (or should) have no complaint at all about the result of that Appeal.

125. The only conclusion to be drawn from ULL's failure to seize the last chance it was given, and to act in accordance with the assurances provided to both TfL and the Court, and to comply not simply with the Conditions but with the letter and the spirit of the law, is that ULL is unregulatable.

126. This is not an allegation to be made against an operator lightly, but given Uber's genesis as a disrupter, "comfortable with confrontation", boasting of its "fierceness", "execution" and "super pumpedness", "playing to win", and wining "at any cost", it is well-made here.

Public confidence in the licensing regime would be gravely shaken were TfL to allow ULL to remain licensed.

127. The purpose of the Probationary Licence was to test Uber's actions against its words.

128. If TfL come to the conclusion that Uber, by its actions, has singularly failed that test, as we submit it should, then any action other than revocation will cause not just our client, and not just others in the regulated trade, but the public in general to query whether the licensing regime is being appropriately and adequately enforced. The public might ask, with some justification: how many last chances is this operator to have?

129. Public confidence in the taxi and private hire licensing regimes is unlikely to withstand the growing perception that Uber is handled with kid gloves, and allowances are made for it that are given to no one else in the industry.

Requested steps

130. We request on behalf of the LTDA that these written representations are placed before the appropriate decision-makers in relation to ULL's anticipated application to renew its London PHV operator's licence.

131. We submit that:

(1) there is reasonable cause to revoke ULL's London PHV operator's licence forthwith, and the interests of public safety require such revocation to have immediate effect;

(2) alternatively, that the renewal of ULL's licence should be refused.

132. We submit that it is imperative that TfL provide explicit and detailed reasons for whatever decision it makes. If there are matters that are genuinely "commercially confidential" (the claim is too-frequently made by parties to litigation in order to defeat transparency) then those and those alone should be scheduled in a confidential annexe.

133. If there are any points in this letter which we can clarify or particularise further, please do not hesitate to contact us and will endeavour to provide such clarification and particularity with all due expedition.

Yours faithfully

MICHAEL DEMIDECKI & CO