

IN THE WESTMINSTER MAGISTRATES' COURT

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

B E T W E E N:

UBER LONDON LIMITED

Appellant

a n d

TRANSPORT FOR LONDON

Respondent

a n d

LICENSED TAXI DRIVERS ASSOCIATION

Interested Party

WRITTEN SUBMISSIONS by the Interested Party

(hearing 14-17 September 2020)

Introduction and Summary

1. The LTDA's submissions fall under two principal headings:
 - i. The photo-fraud issue: this was a flaw in the Uber drivers' app which enabled drivers to upload the photographs of other drivers as their profile pictures, thereby allowing those other drivers to undertake bookings with Uber. 14,788 such trips have been identified to date; all of them uninsured, most of them undertaken by drivers who had been dismissed by Uber, some of them undertaken by drivers whose licences had been revoked by TfL.
 - ii. Breaches of condition 12(b): condition 12 requires ULL, within 48 hours of receiving a safety-related complaint about one of their drivers, (a) to decide whether to remove or suspend that driver, and (b) to notify any such decision to TfL. In the 15-month period of the licence granted by this Court in June 2018, there were at least 104 breaches of condition 12(b).
2. Summary of the LTDA submissions:
 - i. Attempted concealment (cover up) of photo-fraud issue:
 - a) ULL became aware of driver photo-fraud in October 2018. ULL fully appreciated its seriousness at the time but did not inform TfL of the issue until May 2019.
 - b) ULL knew that it should report the photo-fraud issue to TfL on discovery of it. ULL had been told in early 2018 that it should inform TfL of issues of this kind as soon as it was aware of them.
 - c) ULL did not mention the photo-fraud issue in its December Assurance Report to TfL.
 - d) ULL was alerted to further instances of photo-fraud in February, March and April 2019.
 - e) ULL decided to inform TfL of the issue only when the increasing number of photo-fraud cases made the likelihood of hiding them from TfL unrealistic.
 - f) When ULL eventually informed TfL of the issue on 31 May 2019, it did so in a manner calculated to minimise its significance.
 - g) At the instigation of the ULL Board, the issue was placed in an Appendix to the June 2019 Assurance Report. It should have been flagged in the body of the report as an issue of importance.
 - h) The June 2019 Assurance Report misrepresented the issue as historic (pre-December 2018), when in fact it was current.

ii. Breaches of condition 12(b):

- a) The purpose of condition 12(b) is to ensure the prompt notification to TfL of safety-related issues serious enough to result in the removal or suspension of Uber drivers, so that TfL can take its own regulatory action against the driver if required.
- b) No 12(b) notices were sent to TfL on the suspension of drivers involved in the photo-fraud issue, even though ULL acknowledge that photo-fraud was treated as a safety issue from the very beginning.
- c) ULL wrongly waited until the drivers involved in the photo-fraud issue were dismissed, before giving notice to TfL. In some cases this was 6 weeks after the driver had been suspended.
- d) ULL created an unnecessarily complicated procedure for compliance with condition 12(b), which resulted in the purpose of condition 12(b) being frustrated.

Detailed Submissions

Driver photo-fraud

The issue

3. On 7 March 2018, a global technical change to the Uber app was made, which permitted drivers to upload a photograph as their profile picture; but in certain countries (such as the UK) the app was configured to prevent photo uploading by Uber drivers. The restriction was triggered when the GPS of drivers' smartphones showed their location as a country in which Uber did not allow photo uploading. Drivers could by-pass the restriction, however, by turning off the GPS setting on their smartphones.
4. The driver photo-fraud issue concerns drivers uploading their photographs as the profile picture on another driver's account, and then undertaking trips on that account. The seriousness of the issue may be illustrated by one example: a dismissed Uber driver who had accepted a police caution for uploading and distributing child pornography, and had his driver's licence revoked, carried on working as an Uber driver by uploading his photograph onto another's account, after which he was allocated more than 1,500 trips by ULL¹.
5. ULL has coined the terms: "lender" for the driver with an active account who allows another driver to upload his/her photograph as the profile picture on that account; and "borrower" for the driver whose photograph is uploaded. The LTDA will adopt the same terms.

¹ Paragraph 159 of 'Note' to Decision Letter ; Core Bundle CB/5/117

6. The focus of these submissions is not on the cause of the photo-fraud issue, or what has been done to prevent its recurrence: the concerns raised by the LTDA go to how the issue was handled by ULL; in particular the failure of ULL to inform TfL of the issue promptly and candidly. The evidence suggests that ULL first tried to prevent TfL knowing about the photo-fraud issue at all; and then, when concealment became unrealistic, reported the issue to TfL in a manner calculated to minimise its significance.

ULL awareness of the issue:

The October 2018 incident

7. On 13 October 2018, a passenger complained to ULL that the profile picture of the driver allocated to their booking was of a man, whereas the driver's account was in a woman's name². Material dates in the October incident are –

13 October 2018: Complaint (as above) by passenger. ULL's 'Incident Response Team' classified the complaint as a "*potential safety concern - wrong driver*" and caused the complaint to be escalated to ULL's 'Partnership Review Committee' and an Uber Safety Liaison Officer³: the latter referred the issue to ULL's London Operation teams, which triggered an investigation.

16 October 2018: The full investigation was commenced⁴, and the lender was "waitlisted" (suspended).

25 October 2018: The investigation "*suggested that the photograph had been uploaded through the driver app, and not anyone at Uber.*"⁵ The investigation was escalated by ULL to Uber's San Francisco-based engineering team, assigning it "*the highest possible categorisation of business criticality within our technical issue tracking and management system*"⁶.

30 October 2018: A "root cause analysis" had been performed.⁷ In a letter to TfL (23 October 2019)⁸ Mr. Heywood explained –

"... the [San Francisco] Engineering team reported that the issue appeared to have been caused by manipulation of the GPS settings on a user's mobile device in order to enable the individual to bypass the security settings in the Uber app, which prevent partner-drivers in the UK from uploading or amending profile pictures. This was triggered by a global technical change introduced by Uber on 7 March 2018 to allow drivers to remotely upload their photograph in the driver app".

According to Mr. Heywood, a technical solution was implemented to the app on 30 October, to prevent UK drivers uploading or amending their profile photographs.

² Heywood1 @136.1 [CB/12/214]

³ Heywood1 @157 [CB/12/224]

⁴ [EX1/4/126/1958] and [EX1/4/137/2092]

⁵ Heywood1 @158 [CB/12/225] and [EX1/4/126/1959]

⁶ [EX1/4/126/1959] and [EX1/4/137/2092]

⁷ Heywood1 @136.1 [CB/12/214]

⁸ [EX1/4/137]

31 October 2018: The lender's access to the Uber app was permanently deactivated.⁹ By this date, the borrower whose photo was uploaded onto the lender's account on 10 October had, to ULL's knowledge, undertaken over 60 trips using that account¹⁰. ULL were able to identify the borrower as one of eight drivers whose accounts they had deactivated on 12 June 2018 for manipulation of GPS settings¹¹.

8. By 31 October 2018, therefore, ULL knew -

- a. that GPS manipulation was the first step in driver photo-fraud;
- b. that the vulnerability of the Uber app to GPS manipulation followed by driver photo-fraud had existed since 7 March 2018¹²;
- c. that on 12 June 2018 eight drivers' accounts had been deactivated for GPS manipulation; and
- d. that the photograph of *at least* one of those eight had recently (10 October)¹³ been uploaded onto another driver's profile, enabling him to undertake over 60 unauthorised, uninsured ULL bookings.

9. The seriousness of the issue is self-evident. Mr. Heywood says: "...*driver ID fraud was treated as a safety issue from the very beginning*"¹⁴. At paragraph 165 of her witness statement Helen Chapman (Director of Licensing, Regulation and Charging at TfL) says:

"[A]t the most basic level, the breach is a serious matter in its own terms. TfL's primary concern throughout has been that services might have been provided by an individual with a serious criminal record or a medical issue and/or whose DVLA driving licence, or PHV driving licence had been revoked or refused. The risks to the public were serious and substantial."

ULL knew the issue should be reported to TfL as soon as ULL became aware of it

10. GPS manipulation by Uber drivers was a recognised issue in 2017, when drivers were found to be 'spoofing' their location by manipulating the GPS settings on the Uber drivers' app. At that time GPS manipulation did not lead to photo-fraud, but it enabled (for example) Uber drivers to jump the queue at airports or obtain advance information of a passenger's intended destination. The rights and wrongs of 'location spoofing' are no part of these submissions: the LTDA refer to the matter because in the course of investigating it TfL had made it clear to ULL that it should report issues of that kind when they first came to ULL's attention. In a letter to ULL dated 7 February 2019¹⁵, Graham Robinson (of TfL) wrote –

⁹ Heywood1 @159 [CB/12/225]

¹⁰ [EX1/4/83/971] - although by 22 August 2019 Uber quantified the number of trips taken by the borrower on this lender's account at 49 [EX1/4/119/1924]. Document [EX1/4/83/971] gives the number as "over 60".

¹¹ [EX1/4/126/1959]

¹² Subsequent investigation identified a vulnerability to photo-fraud since 21 March 2017: Chapman @181 [CB/14/359-360; and see Heywood1 @169.2 [CB/12/228-229]

¹³ [EX1/4/83/971]

¹⁴ Heywood1 @157 [CB/12/224]

¹⁵ [EX1/4/91/1142]

“... we remain concerned about this issue. In particular, that you did not notify TfL of this issue when it first came to your attention in October 2017, nor when it was brought to your attention again in January 2018, and nor did you bring it to our attention at the outcome of Uber San Francisco’s investigations in February 2018. At that time, the licensing appeal was ongoing and we had made it clear to you that we expected you to tell us about these types of issues affecting ULL. ...

“This issue gives rise to several public safety and security issues as it potentially affects the way in which the booking process works, highlights issues in relation to the honesty and integrity of your drivers and relates to the personal data of passengers. It is therefore of significant concern to us is that ULL’s Board decided notification did not need to be provided to TfL”. [Underlining added]

11. In his reply dated 22 February 2019¹⁶, ULL’s Fred Jones accepted that ULL should have informed TfL about the issue (GPS location ‘spoofing’) *“as soon as we were alerted to its existence”*.
12. In terms of the requirement to report serious issues to TfL, there is no meaningful distinction between GPS manipulation for the purpose of jumping the queue at airports and GPS manipulation for the purpose of uploading a false photograph – if anything, the latter is by far the more serious issue, and more obviously to be reported.

Notification of October incident fo TfL

13. Even though ULL recognised the photo-fraud issue as ‘safety-related’¹⁷ it did not notify TfL within 48 hours of the 13 October complaint, as required by additional condition 12(b). On 14 November 2018, 14 days from the driver’s *dismissal*, a PHV105 notification was sent to TfL¹⁸. The reasons it gave for deactivation (dismissal) were -

“We received a report from a rider on 13/10/18 that this partner-driver did not appear to be the driver displayed in the app. Specifically, the rider reported that the profile photo on xxx account was of a male, but her name was female. The driver reportedly did not arrive so the rider was unable to confirm if they were male or female. When we spoke to xxx about this allegation she advised that she was on holiday, out of the country, at the time of the booking. We conducted a review of our partnership with xxx and given how seriously we treat incidents of this nature, we decided to permanently deactivate this partner-driver's account on 31/10/18. To our knowledge this was not reported to the police.”

14. The PHV105 did not come close to identifying an existential photo-fraud issue:

¹⁶ [EX 1/4/92/1162]

¹⁷ Heywood1 @155, 157 [CB/12/224]

¹⁸ Heywood1 @136.1 [CB/12/214]; [EX1/4/86]

- i. It skirted around the actual reason for dismissing the lender – namely, allowing the borrower to upload a photograph as the profile picture on her account.
 - ii. It made no reference at all to the *borrower*, that he had been on the Uber platform, that his account had been deactivated on 12 June 2018 for GPS manipulation, and that he had since undertaken at least 60 trips using the lender’s account.
 - iii. It failed to mention the investigation by the San Francisco Engineering team, the root-cause analysis, and the vulnerability of the Uber app to photo-fraud since 7 March 2018.
 - iv. It gave the impression of a routine deactivation (“*incidents of this nature*”), when it was the first of its kind.
15. The inadequacy of the PHV105 is addressed by Helen Chapman at paragraph 171 of her witness statement. She says that the issue, i.e. the uploading of another driver’s photo, was “*not adequately drawn to TfL’s attention*”, and that the PHV105 “*was vague as to the specific behaviour that had occurred*”. In his second witness statement, Mr. Heywood agrees “*that this PHV105 could have been clearer*”¹⁹.

ULL did not mention the photo-fraud issue in its December Assurance Report

16. Condition 4 of the additional conditions placed on ULL’s licence by the Chief Magistrate requires ULL “*to 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*”, and to provide TfL with an independently-verified assurance report (the “Assurance Report”) every 6 months²⁰.
17. Nothing is said in the December Assurance Report²¹ about the October incident, the photo-fraud issue, its identified ‘root cause’, or ULL’s known vulnerability to photo-fraud since 7 March 2018²².
18. At paragraph 159 of his first witness statement, Mr. Heywood says –

“Unfortunately, possibly because this was a new type of driver behaviour that we had never seen before, our Regulatory Operations team did not realise straight away that this was a breach of our regulatory obligation to provide a passenger with an accurate photograph of their driver and so did not include it in the breach register as quickly as they should have done [EX1/4/101]. This also meant that the first case was not included in the December 2018 assurance report.”

¹⁹ Heywood2 @46 [CB/15/422]

²⁰ The period was changed to every 3 months on 25 November 2019 [EX/1/4/157/2607]

²¹ Dated 14 December 2018, [EX1/4/88]

²² Subsequent investigation identified a vulnerability to photo-fraud since 21 March 2017: Chapman @181, and see Heywood1 @169.2 [CB/12/228]

19. If it is ULL's position that it needed to inform TfL of a major flaw in its app that seriously compromised public safety - to an extent that it was yet to investigate - only if there was a breach of an ancillary obligation to provide a passenger with an accurate photograph of their driver, then the LTDA suggest ULL is not fit and proper to hold an operator's licence for that reason alone.

Failure to report the October incident to the Board

20. At paragraph 86 of her first witness statement, Laurel Powers Freeling says –

The first complaint from October 2018 was not reported to the Board because (as Mr Heywood explains [Heywood1/159]) it was not identified as a breach at the time.

21. This is not a credible explanation. It is not a precondition to reporting safety issues to the ULL Board that the issue also gives rise to a regulatory breach. In addition to regulatory updates, the Board receives safety updates²³. In any event, Mr Heywood (who attended every board meeting from November 2018 onwards) had been aware of the issue from the first time it was escalated to the San Francisco Engineering team²⁴.

ULL omitted the October incident from its response to TfL's request to report "any further cases" of dismissed drivers being able to carry out PHV bookings

22. In his letter to Mr. Jones (7 February 2019)²⁵, Mr. Robinson (of TfL) expressed concern about ULL's "failure to prevent previously dismissed/suspended drivers from driving". He cited examples of drivers being able to create duplicate accounts and bookings being dispatched to drivers whose PHV licence had expired, and continued -

Additionally, on 9 November 2018 you informed us of two further incidents whereby bookings were dispatched to a PHV whose licence had expired and another whose licence had been suspended by TfL. You mentioned that, as a result, a total of three bookings were dispatched to PHVs that did not hold an active licence... This is a significant public safety issue and one which causes us concern about the effectiveness of the ULL systems and controls in place.

Please confirm whether there are any further cases involving dismissed or suspended drivers who have been able to carry out bookings. [Emphasis added]

23. The request could not have been in clearer language. Mr. Jones should have included in his response that a driver dismissed on 12 June 2018 for GPS manipulation had been able to carry out over 60 bookings on another driver's account in October/November 2018. He failed to do so. His reply of 22 February 2019 took what had been a general question (asking for "any further cases") and re-wrote it as three different questions relating only to specific circumstances. His re-written questions and the answers to them are at **EX1/4/92 @1172-1173**. The inference is that he manufactured a position in which he did not need to (or thought he did not need to) give the requested information.

²³ See, for example [EX1/3/39]

²⁴ Heywood1 @5 [CB/12/176]

²⁵ [EX1/4/91/1138 @ 1146/1147]

The February 2019 incident

24. On 28 February 2019 ULL received a complaint from a passenger that the driver's profile picture on the app did not match the driver's badge²⁶. On 1 March ULL discovered that the profile picture on the driver's account had been changed to a picture of another driver on 16 November 2018 – i.e. *after* the purported 'fix' of 30 October²⁷. The other driver was one of the drivers dismissed for GPS manipulation in June 2018.
25. The lender's account was suspended on 1 March 2019. No condition 12(b) notification was sent. The account was permanently deactivated on 7 March 2019. A PHV105 notification to TfL is dated 18 March 2019²⁸. It gives 16 November 2018 as the date when the lender's profile picture was changed to that of the borrower; and it gives the reason for deactivation as "*allowing another driver to use his account.*" It does not purport to notify TfL of the photo-fraud issue, nor does it do so:
- i. It only says that profile pictures had been "changed": it does not say how.
 - ii. It does not mention GPS manipulation of the lender's device in order to bypass the restriction on drivers uploading photographs.
 - iii. Nor does it mention the vulnerability of the app to photo-fraud since March 2018 and the potential scale of the issue.
 - iv. It does not mention that ULL had believed the issue to have been 'fixed' on 30 October 2018.
 - v. It does not signal to TfL that a driver could still change his profile picture, even *after* ULL had thought the issue was resolved.
26. On 4 March 2019, ULL discovered that the same photograph of the previously dismissed 'borrower' had been uploaded to yet another driver's account on 22 August 2018. That lender-driver's account was deactivated on 5 March 2019, with a similarly-worded PHV105 being sent to TfL on 18 March 2019²⁹. No 12(b) notification was sent.

The March 2019 incident

27. On 8 March 2019 the ULL compliance team noticed a discrepancy between a driver's profile picture and the picture on the driver's documents held on record³⁰. By 12 March an investigation had identified that the photograph of an active Uber driver had been changed to the photograph of another driver on 30 November 2018³¹. That driver's account had become inactive on 22 November 2018 because of expired insurance. This was the second case of a profile photograph being changed after the so-called 'fix' of 30 October 2018.

²⁶ Heywood1 @136.2 [CB/12/214]

²⁷ [EX1/4/126/1961]

²⁸ [EX1/4/95]

²⁹ [EX1/4/126/1961]. The second PHV105 is not exhibited but it is quoted in an email sent by ULL to TfL on 12 September 2019 [EX1/4/126/1961-1962].

³⁰ [EX1/3/45/565]

³¹ [EX1/4/126/1962]

28. The accounts of the two drivers involved (borrower and lender) were deactivated on 13 and 14 March 2019. PHV105 notifications of dismissal (permanent deactivation) were sent on 25 March 2019³². As with the 18 March PHV105 (above) they did not purport to be, nor were they, notification to TfL of the photo-fraud issue.

Escalation of February and March incidents to ULL Board

29. On 25 March 2019 ULL's 'Licensed Operations Management Committee' ("LOMC") included both the February and March incidents in its monthly Regulatory Update to the Board, under the heading: "ULL Major Breaches"³³.

30. The Update says that the ability of drivers to upload photographs onto their accounts "*has subsequently been fixed by the UTI product engineering team*". That was incorrect. Both the February and the March incidents involved the uploading of false photographs after the purported fix of 30 October 2018.

31. The LOMC placed the February and March incidents in "*a list of the regulatory breaches that have occurred since the last board meeting*" (i.e. since 19 February 2019)³⁴. When reporting the issue to TfL in the June Assurance Report, ULL put the incidents in a "*Summary of Breaches that Occurred Prior to 1 December 2018*".³⁵ This re-dating of the photo-fraud breaches is addressed in paragraphs 51-52 below.

32. At paragraph 86 of her first witness statement, Laurel Powers-Freeling says: "*When the Board heard about these incidents [on 25 March], we were obviously very concerned about the potential safety implications. We asked whether TfL had been informed and were told that all of these drivers had already been notified to TfL via the PHV105 process.*" That exchange is not recorded in the exhibited minutes of the Board meeting³⁶.

33. Ms. Powers-Freeling does not explain why, if it be the case, the Board thought that a PHV105 of a driver's dismissal was adequate notification of the photo-fraud issue.

34. At paragraph 160 of his first witness statement, Mr. Heywood says: "*From this point onwards [25 March 2019] ... our work to identify the drivers involved, understand and fix the root cause, and inform TfL about our progress on both these fronts, was a top priority for the business..." [Underlining added]*

35. On 9 April 2019 Laurel Powers-Freeling wrote to Helen Chapman setting out "*a summary of and some reflections on the recently-held ULL [25] March Board meeting*".³⁷ The letter does not mention the photo-fraud issue discussed at that meeting.

³² [EX1/4/96] and [EX1/4/126/1962]

³³ [EX1/3/45/557, 558, 563, 565]

³⁴ Ibid: "Breach summary" @ 560

³⁵ [EX1/4/112/1744]

³⁶ [EX1/3/47]

³⁷ [EX1/4/99]

Meetings between ULL Board and TfL

36. There were numerous opportunities for the Board to inform TfL of the increasing seriousness of driver photo-fraud, which were not taken: see Helen Chapman @172.
- On 11 April 2019 Laurel Powers-Freeling and Mr. Heywood met Helen Chapman and Mr. Robinson on the issue of drivers uploading fraudulent insurance documents³⁸. They were asked to investigate the issue urgently and provide TfL with “full and frank information”. They did not tell TfL that drivers were also uploading fraudulent photographs, even though two weeks beforehand the Board is said by Laurel Powers-Freeling³⁹ to have been “*very concerned about the potential safety implications*” and wanting to know if TfL had been informed.
 - Another high-level meeting between ULL and TfL took place on 2 May 2019⁴⁰. Again, the subject matter of the meeting was drivers uploading fraudulent insurance documents and the serious safety issues arising; and again, TfL was not told about drivers *also* uploading fraudulent profile pictures.
37. The inadequacy of ULL’s communication with TfL about the photo-fraud issue (whether in Assurance Reports, or at meetings or otherwise) is perhaps illustrated by the fact that in a letter to ULL dated 5 September 2019 TfL found it necessary to ask Mr. Jones if the ULL Board had been made aware of the issue⁴¹.

April discovery of more photo-fraud cases

38. On 23 April 2019, an ongoing audit of active London drivers (commenced in February 2019) identified three new instances of driver photo-fraud.
39. In a letter to TfL dated 12 September 2019, Mr. Jones wrote –

*“At this stage, it was also identified that two of the three further cases had occurred after the fix related to manipulation of GPS settings had been implemented (30 October 2018). On 26 April 2019 the ULL regulatory team therefore raised this as a new issue to be investigated by the Engineering team in San Francisco in order to try to confirm the root cause for the additional cases, in particular the two that occurred after the GPS manipulation fix had been implemented. This issue was also assigned to the highest level of business criticality within our technical issue tracking and management system (phabricator). The relevant members of the Engineering team were in London the following week and attended a discussion of the issue at the LOMC meeting on 30 April 2019.”*⁴²

³⁸ Decision Letter @82, 83 [CB/4/24]

³⁹ Powers-Freeling1 @86 [CB/13/296]

⁴⁰ [EX1/4/104]

⁴¹ [EX1/4/123/1943]

⁴² [EX1/4/126/1964]

40. Summarising the position, therefore, as it was no later than 30 April 2019 –

- i. ULL knew that the photo-fraud issue was a safety issue affecting the public to an extent yet to be determined.
- ii. The cases identified on 1 March and 12 March demonstrated that the ‘fix’ of the previous October was not effective in eliminating fresh occurrences.
- iii. The cases identified on April 23 took the total known number to six, which Mr. Heywood says “*made it clear there was a broader problem than we originally thought at the time of the first case*”⁴³
- iv. The new cases prompted ULL to realise that “*this was not a one-off problem, but a wider issue of serious concern*”⁴⁴
- v. On any view the issue was extremely serious, and ULL must have known it was. But still TfL was not notified.

May Regulatory Update to the Board

41. On 20 May 2019 the Board received another update from the LOMC⁴⁵: The three new instances of driver photo-fraud (identified on 23 April in an audit of drivers’ profile pictures⁴⁶) were reported: their description was elevated from “major breaches” (25 March report) to “critical breaches” – the highest level of severity on the LOMC’s own scale, involving “likely, immediate and/or widespread risk to public safety”⁴⁷.

42. The update set out the issue in these terms -

“ULL Critical Regulatory Breaches (3)

There were three critical regulatory breaches this month relating to ULL. These all related to a vulnerability in the app that three previously [word missing: “deactivated”] drivers exploited in October and November 2018 to upload their own photograph over the profile picture on another driver’s account (with the cooperation of that driver), and then take trips on the Uber account using that other driver’s account and documentation This issue was resolved by Product Engineering in December 2018 (using sign-up city rather than GPS to identify UK based drivers and disable the functionality).” [underlining added]

43. It is not clear why the LOMC told the Board that the issue had been resolved, or why the month “December 2018” was given for its resolution. The cases referred to in the update were still under investigation by the San Francisco Engineering team, whose report was not received until 7 June 2019⁴⁸.

⁴³ Heywood1 @136.2 [CB/12/214]

⁴⁴ Heywood1 @160 [CB12/225]

⁴⁵ [EX1/3/51]

⁴⁶ [EX1/4/126/1692]

⁴⁷ [EX1/2/18/373]

⁴⁸ Heywood1 @169 [CB/12/228]

Notification of issue to TfL in a manner calculated to minimise or conceal it

44. The means by which ULL eventually notified TfL of the photo-fraud issue were inconsistent with its stated understanding of the seriousness of it.

31 May 2019 ‘Monthly Update’ to TfL

45. Notwithstanding its known seriousness, the first notice of the photo-fraud issue that ULL gave to TfL’s senior licensing team is found as one item amongst many in a document entitled “TfL Monthly Update - May”⁴⁹. Helen Chapman says: “*This method of notification of an issue of such significance was not in accordance with the usual notification process to TfL.*”; and “[G]iven that the ULL Board had discussed these incidents as ‘critical regulatory breaches’ it seems remarkable that TPH’s senior licensing team were not notified by way of a separate notification dealing solely with the issue”⁵⁰. The Decision Letter states: “*Usually, any issues of substance and concern were escalated by way of a separate letter or email to the TPH’s senior management.*”⁵¹

46. The May update is presented as “*an overview of our correspondence to TfL and key activity over the past month*”. It comprises five pages and covers some twelve topics. The photo-fraud issue is the fifth topic mentioned. A mere half-page is given to it, under the heading “*Issue identified – drivers uploading their profile picture onto another driver’s account*”.

47. The update fell substantially short of full and frank disclosure of the issue:

- i. It failed to give any indication of the seriousness with which Uber’s own internal reporting had treated the issue.
- ii. It failed to state when ULL had become aware of the issue (October 2018), and when the vulnerability arose (March 2018).
- iii. It failed to give any indication of Uber’s then estimate of the number of trips affected.
- iv. It stated the issue had been “addressed”, when in fact the 30 October 2018 “fix” was known *not* to have prevented further frauds.
- v. It did not mention that the San Francisco Engineering team’s investigation had re-commenced, was still ongoing, and had yet to report.
- vi. It failed to cross reference the PHV105s sent in respect of the lenders, or otherwise inform TfL of what was set out in them.
- vii. It did not deal at all with the borrower drivers, many of whose accounts had themselves been terminated for GPS manipulation, and whose inadequate PHV105s had to be updated.

⁴⁹ [EX1/4/109]

⁵⁰ Chapman @172, 173 [CB/14/356-357]

⁵¹ Decision Letter @110 [CB/4/31]

31 May 2019 PHV105s

48. The three cases identified on 23 April 2019 were the subject of PHV105s sent on 31 May 2019, the text of which is set out in Mr. Jones' letter of 12 September 2019⁵². They did not purport to be, nor were they, notification to TfL of the photo-fraud issue.

The June 2019 Assurance Report (26 June 2019)

49. The 2019 June Assurance Report places the February, March and April incidents of photo-fraud in "Appendix 2" rather than in the body of the Report, where they should have been given prominence as an issue of importance⁵³. They are listed, along with the October incident, under the heading: "**Summary of Breaches that Occurred Prior to 1 December 2018**". Two different explanations are given -

Mr. Heywood explains that "*the Board considered it conceptually helpful and clearer*" for breaches that occurred during the reporting period to be set out in a different section from those that occurred outside the reporting period: **Heywood1 @261**, clarified in **262**.

Laurel Powers-Freeling on the other hand says in her first statement @93 that "*The Board felt there was simply too much detailed information on each breach to include in the main body of the report and was concerned that we could once again be seen as overloading the core of the report.*"

50. The Board's alleged involvement in the decision is not recorded in the minutes of any Board Meeting served in this appeal. In any event, neither version of the reason for placing the photo-fraud issue in Appendix 2 is satisfactory:

Mr. Heywood's explanation is at odds with the June Assurance Report itself, where the majority of breaches that occurred *outside* the reporting period are set out in the same section as those that occurred *within* the reporting period: (sections 8.2 and 8.5)⁵⁴. No cogent explanation is given for placing the six fraudulent photo breaches into Appendix 2, but leaving the 23 fraudulent driver-licence, fraudulent vehicle licence, and fraudulent insurance document cases occurring in the same period in the body of the Report. Nor does Mr. Heywood address the fact that the photo-fraud breaches were continuous, with repeated trips being taken until suspension/deactivation of the relevant accounts in March and April. At the very least it was misleading to classify them as occurring "*prior to 1 December 2018*"; on a more critical assessment it was untrue.

Laurel Powers-Freeling's concern does not sit comfortably with the facts. The breaches summarised in the body of the Report (breaches both within and outside the reporting period) occupy 49 pages. It is not easy to see how including the two or so pages from Appendix 2 which summarise driver photo-fraud⁵⁵ could realistically tip the balance of the 217-page core of the Report into "overloading".

⁵² [EX1/4/126/1963]

⁵³ [EX1/4/112/1746-1751]

⁵⁴ [EX1/4/112/1527-1530 & 1598-1646]

⁵⁵ The pages are redacted in the exhibits served on the LTDA; but in a letter to TfL dated 19 September 2019 [EX1/4/126/1964] ULL say that the six cases of photo-fraud "are detailed at pages 230-231" of Appendix 2.

51. The full text of the heading to Appendix 2 is –

Appendix 2

Summary of Breaches that Occurred Prior to 1 December 2018

The 12 breaches that were identified in the period 1 December 2018 to 31 May 2019, but occurred prior to 1 December 2018, are summarised in the following table. Whilst these breaches occurred prior to 1 December 2018 they were identified through our assurance processes during the period 1 December 2018 to 31 May 2019 (and hence were not included in the previous Assurance Report).

52. The impression given is that the photo-fraud issue was historical; whereas in truth it was current: a known and developing “*safety issue*” of “*serious concern*”, with a substantial number of unlawful, uninsured journeys having recently been undertaken by dismissed drivers, resulting in passenger complaint – all within the reporting period of the June Assurance Report.

Breaches of Condition 12(b)

53. In June 2018 ULL’s operator’s licence was renewed subject to the imposition of 14 additional conditions. These conditions were offered by ULL. In the judgment handed down on 26 June⁵⁶, the Chief Magistrate said: “*I have given particular weight to the conditions that have been agreed between the parties.*”

54. Additional Condition 12 is in these terms –

12 Complaints handling

ULL shall provide an update to the licensing authority every six (6) months on the effectiveness of its complaints handling process... [matters to be included]

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.*

55. The Decision Letter explains the importance of condition 12(b) –

“At the most basic level, even if the relevant individual is removed from the ULL platform, if TfL does not know about the incident they could continue providing PHV services via another platform or app⁵⁷.

⁵⁶ [EX1/1/4]

⁵⁷ Decision Letter @147 [CB/4/40]; see also Chapman @198 [CB/14/364]

ULL wrongly waited until drivers were dismissed before giving notice to TfL

56. ULL does not appear to have made a single condition 12(b) notification regarding the *suspension* of any of the lenders or borrowers involved in the driver photo-fraud; but rather it has relied solely on notifications sent up to 14 days after *dismissal* under Regulation 9(4)(c) of the *Private Hire Vehicles (London) (Operators' Licences) Regulations 2000* (“the Regulations”): **see paragraph 136.4 of Mr. Heywood’s first statement.**
57. Every London PHV operator’s licence is subject to standard conditions prescribed by the Regulations. Regulation 9(4)(c) requires that if a driver is suspended or dismissed (“*ceases to be available to the operator for carrying out bookings, by virtue of that driver’s unsatisfactory conduct in connection with the driving of a private hire vehicle*”) the operator must give notice to TfL within 14 days of such event, giving the name of the driver and the circumstances of the case.
58. The principal difference between condition 12(b) and regulation 9(4)(c) is the period allowed for notification. The 48-hour period running from receipt of complaint in 12(b) is intended to ensure the prompt notification to TfL of safety-related issues serious enough to result in the dismissal or suspension of Uber drivers; whereas 14 days are given by regulation 9(4)(c) for notification of suspensions or dismissals generally.
59. It is no excuse for non-compliance with condition 12(b) that there was subsequent compliance with regulation 9(4)(c). In a letter to TfL dated 22 February 2019⁵⁸, ULL explain the late reporting of the suspension of certain drivers -

“While the suspension of these drivers was reported to you outside the 48 hour window per the new condition, I can confirm that we did send a corresponding PHV105 notification to TfL within the 14 day period following a decision to deactivate in each instance. We conduct a thorough review of every safety incident and while a decision to suspend these drivers within the 48 hour window had been made, no decision to permanently deactivate these drivers had been arrived at in the same period. As such, the deactivation decisions made for these drivers followed the normal 14 day notification process in compliance with Regulation 9(4) and per our regular reporting process.” [Underlining added]

60. When a driver is suspended after a safety-related complaint, it is immaterial to the 12(b) notification requirement that a decision has not yet been made whether or not permanently to deactivate his/her account. On 30 April 2019 TfL replied to ULL⁵⁹ -

“You referred to the suspension of these drivers not being reported within the 48 hour period required by condition 12 on ULL’s operating licence, but that dismissal notifications were given within 14 days and in accordance with Regulation 9(4) of the PHV Operator Regulations.

⁵⁸ [EX/1/4/92/1154]

⁵⁹ [EX/1/4/101/1216]

We expect ULL to comply fully with all of the conditions on its licence. We do not consider that the failure to comply with this condition can be ignored or defended on the basis that you then complied with regulation 9(4). Although you refer to the notification of dismissals being carried out within the 14 day period, you did not notify us of any suspensions of drivers. It is essential for TfL to be confident that you will comply with this requirement at all times which is why the Magistrate added this condition to ULL's 15 month licence.” [Underlining added]

61. Mr. Heywood is wrong when he asserts (paragraph 210 of his first witness statement) that condition 12(b) introduced a *new* requirement to notify TfL of the waitlisting (suspension) of a driver. It did not. Condition 9(4)(c) requires TfL to be notified within 14 days of the dismissal *or suspension* of a driver. The standard form PHV105 makes that clear on its face, as did TfL's letter of 30 April 2019 (above).
62. The fourth and fifth cases of photo-fraud were discovered on 23 April 2019⁶⁰. The 'lender' accounts were suspended on the same day, in accordance with the timeframe in condition 12(a). Condition 12(b) required that TfL was notified promptly. It was not: instead, the issue was first considered by the LOMC on 30 April 2019⁶¹ and then by the Board's sub-committee on 20 May 2019⁶². Deactivation did not take place until 30 May 2019, with PHV105 notifications not being sent until 31 May 2019 - 6 weeks after the 'lender' drivers were suspended. No explanation for this delay has been given.

Manufactured 'difficulty' in complying with condition 12(b)

63. Once a condition 12(a) decision is made to suspend or dismiss a driver, notifying TfL of it should not be problematic. Presumably a driver is told of the allegation and the reason for his/her dismissal or suspension. Condition 12(b) requires no more than that the same information be sent to TfL; and there is no reason why it should not be sent immediately upon dismissal of the driver.
64. On 28 June 2018, two days after ULL's appeal was allowed, Tom Elvidge (then General Manager, Uber UK) sent Helen Chapman the first of the notifications required by Condition 12(b). They are attached to his letter of the same date, which is at **EX1/4/77**. In his letter, Mr. Elvidge outlined a straightforward approach to complying with condition 12(b). He wrote –

“We have adopted this approach for the purposes of ULL's first notification pursuant to the new licence conditions. For each driver we have shared the following information:

- *Driver Name*
- *Private Hire Driver Licence number*
- *Date of Initial Complaint*
- *Rider Complaint (Verbatim)”*

⁶⁰ [EX1/4/126/1962]

⁶¹ [EX1/4/126/1962]

⁶² [EX1/3/54]

65. Six 12(b) notifications are then given, observing the above format. But Mr. Elvidge's approach (fully compliant with condition 12(b)) appears to have been abandoned thereafter. In section H of his first witness statement (page 63) Mr. Heywood gives a timeline of 158 known breaches of condition between 26 June 2018 (the date of the appeal decision) and 31 January 2020. He says (paragraph 209) –

“The bulk of breaches set out above (nearly 70%) are of Additional Condition 12, that is, the requirement to report to TfL within 48 hours all safety-related complaints.”

66. That is not a correct statement of condition 12(b). Mr. Heywood's misreading of the condition is of concern – not least because it was a condition offered by ULL. Having over-stated the obligations it imposes, Mr. Heywood goes on to explain the difficulties in complying with his re-formulation of it (paragraph 211) –

“Following the successful appeal, we immediately set about ensuring compliance with Additional Condition 12. This required a significant level of thought, organisation and investment in a short period of time.”

67. Mr. Heywood then touches on “the need to define... a ‘safety-related complaint’” (paragraph 212), and “the absence of any industry guidance” (paragraph 213).

68. Mr. Heywood fails to acknowledge the clear distinction between 12(a) and 12(b). He explains in some detail the difficulties experienced in complying with 12(a) but gives no explanation whatsoever why there should be any delay between the suspension or dismissal of a driver and the 12(b) notification of it to TfL.

69. At paragraph 214 Mr. Heywood says that a ‘framework’ has been created which divides the 48-hour period for compliance with condition 12(b) into two periods of 24 hours each. He says: “The framework defines the first 24 hours as the waitlisting process” in which the incident is assessed, and a decision made whether or not to waitlist (suspend) the driver. The difficulties in coming to a decision whether to suspend or dismiss a driver within 24 hours of receiving a safety-related complaint are entirely of ULL's own making. Condition 12 gives 48 hours.

70. At paragraph 215 Mr. Heywood continues -

“The second 24 hours are defined as the reporting process. Once the driver has been suspended, a separate team within the CoE [the ‘Centre of Excellence’ situated in Ireland] is alerted of the incident. This team compiles a report with all the specific case details (including the identification number if the incident has been reported the MPS) and submits this to TfL.” [Underlining added]

71. Mr. Heywood does not say why reporting the dismissal/suspension of a driver to TfL needs to be allocated to a separate team in Ireland, or why TfL could not be notified of the decision by whomever makes it – such a person having all the information necessary to comply with condition 12(b).

Conclusions

72. Cumulatively, the breaches of condition 12(b), together with the attempted concealment of the photo-fraud issue, the manner in which TfL were eventually informed of it and the inadequacy of the disclosure, reflect a culture in which information required to be disclosed to TfL is manipulated, both as to the content and timing of it, even if the manipulation is at the expense of regulatory compliance and public safety. A stark corroboration of ULL's priorities in relation to information disclosure is given in the correspondence served by ULL in this appeal: an internal email⁶³ sent by Mr. McGonigle on 22 October 2019 reads -

Limerick have also finished the review and consolidation of all Wrong Driver complaints going back to Jan 2018, so we'll be in a position to provide that if TfL ask for it. One thing this has thrown up is 50 drivers that should be considered at PRC for potential deactivation. I've told Limerick to sit on the deactivation decision for 24hrs (all drivers are waitlisted) - conscious that any deactivations will trigger very visible PHV105s to TfL. One to discuss at our meeting tomorrow.

73. No amendment of imperfect IT systems, no re-drafting of policies, or tranche of additional licence conditions, or creation of another extravagantly-named team, either addresses or is likely to eradicate that culture.

74. ULL is not fit and proper to hold a London PHV Operator's Licence.

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September 4, 2020

⁶³ [EX1/4/136/2085-2086]