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Mr Tom Elvidge  
General Manager  
Uber London Limited  
Aldgate Tower  
First Floor  
2 Lemn Street  
London, E1 8FA

Helen Chapman  
General Manager  
Taxi & Private Hire  
Transport for London

2<sup>nd</sup> Floor, Zone 2G2,  
230 Blackfriars Road,  
SE1 8NW

Dear Mr Elvidge

## **Application for the renewal of a Private Hire Vehicle Operator's Licence**

We write further to Uber London Limited's (ULL) application for the renewal of a London Private Hire Vehicle (PHV) Operator's Licence, which we received on 18 August 2017.

We have carefully considered ULL's application, together with the results of the enquiries that have been undertaken over the past four months and other relevant material available to us.

For the reasons set out below, Transport for London (TfL) is not satisfied that ULL is a fit and proper person to hold a licence. As such, TfL has decided not to grant ULL a London PHV Operator's Licence to extend beyond 30 September 2017.

We are currently considering whether ULL's business model complies with the statutory framework, in certain key respects. TfL is currently minded to conclude that it does not. We have written to you separately about this matter.

In summary, the reasons for our decision are as follows. It is considered that each of these reasons, on their own, provide a sufficient basis to reach the view that ULL is not fit and proper:

- a) It is considered that ULL misled TfL in correspondence in 2014 as to the process by which bookings are accepted through the Uber app. In particular, ULL provided a false picture of the order in which various steps take place, when a booking is being accepted. TfL had asked ULL to explain its systems, and had been clear that we would rely on their answers when determining the lawfulness of their operating model. Whether or not the false information provided by ULL was determinative of the lawfulness of ULL's

model (a matter we address in separate correspondence), TfL considers that ULL's answers were materially false and misleading;

- b) ULL had available to it for use in London a piece of software known as 'Greyball'. Greyball can be deployed for a variety of legitimate purposes, though some companies within the Uber group have used it for the purposes of evading regulatory enforcement in other jurisdictions. TfL has corresponded extensively on this question with ULL. ULL has said that it has not been used for this purpose in London. However, we do not consider that ULL have been open and transparent with TfL about Greyball despite having been given ample opportunity by TfL to state its position clearly. In particular the extent to which those responsible for Uber's operations in London were aware or involved with decisions about its use in other jurisdictions. What information TfL now has about Greyball (and the involvement of ULL's senior staff in its possible use elsewhere) has only come to light following repeated questioning from TfL;
- c) ULL has demonstrated a lack of corporate responsibility in relation to a number of other issues which have potential public safety implications and which are detailed below.

Full reasons for our decision not to grant ULL a London PHV Operator's Licence are set out below:

**'Fit and proper person': s. 3 of the Private Hire Vehicles (London) Act 1998 ("the 1998 Act")**

1. Section 3(3) of the 1998 Act sets out the requirements that must be satisfied before TfL, as the licensing authority, can (and must) grant a licence. These include the requirement that the applicant is a "fit and proper person" and such further requirements as TfL may prescribe. The phrase "fit and proper" is used in a number of statutory contexts, but its meaning is context-specific: a person who may be "fit and proper" for the purposes of one licensing regime may not be for the purposes of another. The Courts have confirmed that licensing authorities may take into account "anything which a reasonable and fair-minded decision maker, acting in good faith and with proper regard to the interests both of the public and the applicant, could properly think it right to rely on."

**The 2014 Correspondence About the Acceptance of Bookings**

2. In 2014, in the course of correspondence with ULL, TfL asked ULL a series of specific and detailed questions about its booking process, as part of an investigation into the way in which ULL operated. In a letter dated 28 February 2014, TfL asked ULL specifically for data flows

associated with the booking process, starting with the process initiation by the passenger using the App. TfL also asked for details of the timing and extent of any information flow from consumer/app to back-end servers/booking engines to any intermediary servers and through to end driver/app. As TfL made clear in that letter, its previous questions to ULL and its follow-up letter of 8 April 2014, its concern was to clarify whether ULL, Uber BV (another entity within the Uber group of companies) or Uber's partner drivers were accepting bookings or making provision for the invitation and acceptance of bookings.

3. In response by letter dated 17 March 2014, ULL said that, in its view, it was accepting bookings. ULL described the process flow as follows:
  - a) Client (ULL referred to a passenger as a "client") requests a vehicle using the Uber app installed on a smartphone. The client's smartphone forwards the client's requested pick-up location, based on satellite GPS signals, to Uber London Limited's dispatch server.
  - b) Client request is accepted by the dispatch server.
  - c) The dispatch server selects an available licensed PHV driver and forwards details of client request to such licensed PHV driver.
  - d) Licensed PHV driver travels to requested pick up location, collects the client seeking transportation and completes journey.
  - e) At the conclusion of the trip, the driver terminates the trip. The driver's smartphone sends details of the route and drop off location, based on satellite GPS signals, back to the dispatch server, which triggers the calculation of the fare.
  - f) Both the driver smartphone and the client smartphone receive the details of the trip including the total amount charged and the route.
4. ULL also said that it retains full control of all dispatches, including the ability to contact the driver and the rider, the ability to cancel the request at any point before dispatch and to terminate a pick-up prior to the trip commencing. It said that it had full responsibility for the data stored on the dispatch servers. ULL concluded: "Uber London is not sub-contracting bookings, but is arranging for drivers (a few of whom hold an Operator's License of their own) to discharge a booking already accepted by Uber London Ltd. As you state in your letter, this is permissible."
5. ULL explained the process of accepting bookings once again, in a letter dated 17 June 2014:
  - a) GPS data is sent from the smartphones provided by ULL to its PHV drivers to our cloud servers, which in turn transmit such data to potential passengers, who access that data through the Uber App installed on their own smartphones... The data shows the potential passengers the location of vehicles in relation to

the potential passenger's own location, and gives an approximate time for the closest Uber vehicle to arrive at the potential passenger's pick-up location.

- b) If the passenger wishes to book a vehicle he does so through his GPS-enabled smartphone installed with the Uber App. The passenger can also use the Uber App to ask for a quote before making the booking. The customer's booking pick-up location is transmitted through the customer's GPS-enabled smartphone installed with the Uber App to ULL's licensed operating centre which is using hosted IT infrastructure, where it is accepted and logged on ULL's systems. It is instantaneously sent to the relevant driver. Also at the same time, ULL's systems will respond to the passenger by transmitting data held on its servers giving the driver's name, car type and registration.
- c) It is accepted that receipt and acceptance by ULL of the passenger's booking takes place at the same time as the relevant driver is notified of the booking. That is an inevitable consequence of the technology used. It does not alter the fact that ULL accepts the booking on behalf of the driver, evidences that acceptance by recording it and confirms such acceptance by arranging for details of the relevant driver to be communicated to the passenger. It is also relevant here that ULL can and occasionally does refuse bookings.

- 6. At that time, following careful consideration and based on the information provided by ULL, TfL concluded that ULL (not any other entity and not its drivers) was accepting bookings for the purposes of s. 2 of the 1998 Act.

**The 'taximeter litigation': *Transport for London v Uber London Limited, Licensed Taxi Drivers Association, Licensed Private Hire Car Association* – 2015**

- 7. Around the same time, a separate dispute arose concerning whether or not ULL's partner driver vehicles are "equipped" with a "taximeter" in breach of the prohibition in section 11 of the 1998 Act. In order to obtain a clear answer to that question, TfL issued Part 8 proceedings seeking declaratory relief, naming ULL, the Licensed Private Hire Car Association (LPHCA) and London Taxi Driver's Association (LTDA) as defendants. In his judgement of 16 October 2015, Ouseley J set out his understanding of the process by which ULL accepted bookings. Those facts were not in dispute; his description was largely taken from ULL's skeleton argument, supported by ULL's evidence. The relevant paragraph of the judgment describes the bookings process as follows:

"12. When booking, the customer can choose a particular type of vehicle. The nearest vehicle of that type available for hire will be shown on the Smartphone screen. The customer then indicates precisely where they want to be picked up, and clicks "request" to

make the booking. Uber accepts the booking and Uber's servers in the United States locate the nearest available vehicle of the type requested by the customer. The servers then send the accepted booking to the Smartphone of the nearest driver, who has 15 seconds to accept the booking. If he does not accept it, the server sends the booking to the Smartphone of the driver of the next nearest vehicle to the customer. When the driver takes on the booking, he is sent all the relevant details including the location. He can contact the customer via the Driver App but not via the customer's mobile number. The customer is sent also by the Customer App details of the driver, car and estimated time of arrival.” (emphasis added)

8. In its evidence to the Court, ULL had stated that it accepted booking requests before they were allocated to the nearest driver. The relevant paragraphs of the statement are:

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

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

9. The booking process described in these Court proceedings was consistent with the description provided by ULL to TfL in the course of the 2014 correspondence. In short, ULL clearly represented that it accepts the booking first, before then allocating it to the closest available driver.
10. Over the course of 2016, two separate public statements by companies within the Uber group, which cast some doubt on ULL’s statements in the 2014 correspondence and the Taximeter litigation, came to TfL’s attention.

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

11. First, in 2016, Ms Bertram, the Regional General Manager for Northern Europe, gave evidence to the Employment Tribunal in a case concerning whether or not ULL's drivers were workers, for the purposes of European law. Her evidence described the booking process in terms that suggested the booking is not accepted by ULL until a driver has confirmed that they are available and willing to take the journey; confirmation to the customer and acceptance by ULL take place almost simultaneously and after that point. Her evidence was:

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

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

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

12. This description is materially different from that given to TfL in the 2014 Correspondence. Whereas previously ULL had stated that it accepted the bookings first, before allocating them to a driver, in the Employment Tribunal it asserted that a booking is not accepted until a driver is available to take it. It may be noted that acceptance of a booking by ULL independently of and prior to any engagement by the driver would tend to support an argument that it is ULL, and not the driver, which accepts the booking. Conversely, acceptance by the driver in the first instance – and by ULL only thereafter – would tend to support an

argument that the drivers are independent contractors, rather than workers.

### **The Canadian proceedings: *City of Ontario v Uber Canada Inc., Uber BV and Rasier Operations BV***

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

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

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

### **The 2016-17 correspondence and TfL’s Investigation**

16. TfL sought an explanation from ULL about the apparent discrepancy between Uber’s evidence in Canada and ULL’s description of the mechanism whereby bookings are accepted in London. In particular, TfL enquired whether the booking process was the same in both locations.

17. ULL explained in a letter dated 7 October 2016 that the software underlying the app is the [REDACTED] but the [REDACTED]
18. In November 2016, TfL staff attended a meeting at ULL's offices and ULL presented a slide deck setting out the process by which bookings are accepted. The slide deck explained the booking process as follows:
- a) Rider (ULL describe a passenger as a "rider") makes a booking request for pickup using the Uber app to describe the preferred location
  - b) Uber identifies most appropriate driver for the booking request and system communicates the booking request via the app
  - c) Driver confirms he/she is able to complete the booking by tapping the driver app
  - d) Booking is accepted and recorded by ULL
  - e) Details of the booking are sent to both the rider and driver
  - f) Rider completes trip. The full booking record is stored by Uber London.

ULL provided a data download from the system with timestamps which showed [REDACTED] between driver confirming the request, and ULL accepting the booking.

19. TfL wrote to ULL on 16 May 2017, requesting permission for an IT systems architect to visit ULL and review the manner in which the technology and booking process works. TfL considered that the information provided by the systems architect would provide it with further clarity and enable it to understand the booking process better. In particular, it would assist in clarifying at which stage a booking is accepted and by which party to the transaction. TfL appointed Deloitte UK to carry out the IT systems architect review and Deloitte visited ULL between 25 July and 4 August 2017. Deloitte produced a report dated 7 August 2017 which details ULL's technology and booking process. .
20. The process flows showing the booking process are on page 19 of the report. In summary, a booking is made in the following way:
- a) A request is made by a rider using the Rider App. The system searches available drivers who are online, eligible and meet certain criteria such as estimated time of arrival (ETA). The system decides whether there are appropriate drivers to fulfil the request and notifies the rider of the ETA to pick up.
  - b) The system checks whether surge pricing is valid at the pick-up point, calculates the trip fare estimate and the ETA and this is displayed on the Rider App.



- c) The Rider confirms the request and the system chooses the most appropriate driver based upon locally configured rules. The driver has 15 seconds to confirm the trip by tapping their device.
- d) When the driver 'accepts' the trip, ULL 'accepts' the trip automatically in the system and a booking record is stored in the ULL database. The system provides the rider with the relevant details of the driver name, photo, rating, ETA.

21. The IT architect review has provided TfL with a much clearer understanding of the booking process. Contrary to ULL's explanations of the booking process to TfL in the 2014 Correspondence and to the High Court in the Taximeter challenge, it is clear that ULL's system automatically 'accepts' the booking only after a driver has 'accepted' the trip. If the first driver to whom a booking is offered rejects the trip, it is then forwarded to the next available driver. ULL's prior assertions, that the dispatch servers arranged for drivers to discharge a booking already accepted by ULL, and that receipt and acceptance by ULL of the passenger's booking takes place at the same time as the relevant driver is notified of the booking, were false.

22. In a letter dated 30 June 2017, TfL sought clarification from ULL about whether it had changed its position on the booking process. ULL responded as follows in a letter dated 14 July 2017:

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

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

23. We consider that this explanation is unconvincing. The correspondence in 2014 was extensive and detailed. TfL made specific requests for information about the booking process, pursuant to its concern to identify which party was accepting the booking (ULL, Uber BV or the drivers). Furthermore, ULL was clear and precise as to the 'chronology' of the acceptance process: its answers did not "lack

precision”; on the contrary, they were precise, but false. The same is true of the evidence it provided in the Taximeter case.

24. ULL asserts that its answers in 2014 were influenced by the fact that Uber was only operating in London at the time and not other areas of the UK. It is not clear how the fact that Uber is operating elsewhere in the UK changes or affects the way in which bookings are accepted. ULL gave a further explanation in its letter of 2 September 2017 and said that, when the system was only being used in London, it would only identify London licences at the stages described in paragraph 20(a) and (c) above. The letter states that ULL’s position on acceptance of bookings has not changed. It says that it has always strived to be clear that it is ULL which accepts the booking, and that this has always been and remains the case. ULL accepts in its letter of 2 September 2017 that the process described in 2014 “did not fully explain the process for checking which individual driver could complete the booking prior to acceptance, although it is obviously the case that such a step is necessary given that booking details are only provided to a single identified driver at the time of acceptance.” The letter also states:

“... ULL can only accept a booking once it has established that a particular driver is available – a driver could be logged on the app but not necessarily available for the booking. As the drivers available for any particular booking request may now be from more than one licensing jurisdiction, we have highlighted this step in the flow to you, ...

For the avoidance of doubt, we are not saying anything ‘different’ nor has the way bookings are accepted in London changed. Acceptance occurs once a driver has confirmed availability for the booking.”

25. We do not consider it is correct to say that nothing has changed in ULL’s explanation. Nor is it the case that the current explanation is ‘fuller’ and, for that reason, more accurate or complete. ULL’s presentation of its processes in 2014 was full, but false in a material respect. TfL considers that this is relevant to whether or not ULL is a ‘fit and proper person’ to hold a licence.

## **Further matters relevant to TfL’s decision**

### ***Greyball Technology***

26. In March 2017 it came to TfL’s attention through press reports that Uber had developed a piece of software known as “Greyball”. The press reported that this technology was developed to root out and target people that Uber considered were using the service inappropriately. It had been used to identify and circumvent the

enforcement activities of officials who were responsible for regulating Uber's businesses.

27. In essence, Greyball enables Uber to provide its customers with a modified view of its services. An Uber customer typically sees a 'standard' view of the app. However, Greyball can be used to display different or modified views, depending on the user. A 'Greyball' tag is applied to a particular customer account and, as a result, the standard view is hidden from them. The customer will not ordinarily be aware that they have been tagged, or that they are seeing a modified view of the app. The news coverage suggested that Uber had identified local law-enforcement officials via various means, and then excluded them from making effective use of its services via the use of Greyball.
28. ULL did not proactively contact TfL regarding Greyball technology, either before or after its possible use as a means of evading regulatory enforcement had been publicised. TfL initiated correspondence on 17 March 2017 and has written to ULL repeatedly seeking information on the use of Greyball in London, whether the technology formed part of the user system capable for use in London and the extent to which the program has been used in London and elsewhere around the world.
29. Ms Bertram, on behalf of ULL, initially replied on 24 March 2017 stating that Uber was undertaking a global investigation into the use of Greyball and expressed confidence that the investigation would not reveal any instances of Greyball being used for identifying and evading officials with responsibility for the regulation of Uber in London. The response did not directly answer TfL's questions in its letter of 17 March 2017.
30. On 16 May 2017, TfL wrote to ULL regarding its application for an operator's licence. The letter included five specific questions regarding the use of Greyball technology. ULL responded on 18 May 2017 with limited responses to the questions posed in relation to use of Greyball technology. On 26 May 2017, TfL sent ULL notice of its decision on ULL's application for an operator's licence (a grant of a short four month licence). This letter included six specific questions about Greyball.
31. On 30 June 2017, Jenner & Block ('JB') wrote to TfL advising that they were engaged by Uber to conduct an investigation into the use of Greyball technology in different markets worldwide. This was primarily to investigate whether Greyball was used to interfere with or impede regulatory enforcement. The letter stated that JB's investigation determined that the only use of Greyball technology in London involved its use for internal testing of new services purposes prior to launch. By way of example, a new service might be visible only to ULL employees, enabling them to test the service, before it was made available via the ordinary 'view'. The letter specified that five senior Uber officials were

interviewed as part of the investigation. No detail was provided of these interviews or of the interviewees.

32. TfL sent a further letter on 20 July 2017 requesting information on the extent of JB's investigation and the knowledge of those senior officials of the use of Greyball technology for the aforementioned purposes in other jurisdictions, in particular Ms Bertram and Rob van der Woude, who was a Director of ULL.
33. On 4 August, ULL responded and, on the same day, TfL also received a separate response from JB. ULL stated that "Jenner & Block's investigations into other jurisdictions have identified some evidence that certain of the five personnel you [TfL] identify in your letter, who are involved in the ULL business but have a wider, international role, have been exposed to communications regarding the use or potential use of Greyball technology outside the UK in a way that could have impeded or interfered with regulatory or law enforcement".
34. ULL stated that it would be amending its constitutional and corporate governance arrangements to include establishing a PHV Operator Committee chaired by an independent non-executive director which would be responsible for oversight of ULL's licensed activities.
35. After further correspondence, JB provided a key identifying the senior officials referenced in its letter of 4 August 2017. This revealed that Ms Bertram was aware of the use of Greyball technology being contemplated in a manner that could have had the effect of interfering with or impeding regulatory enforcement in markets outside the UK. The letter of 4 August 2017 stated that on a 'handful of occasions' in 2015, Ms Bertram was party to initial discussions to that effect.
36. JB's letter of 4 August 2017 stated that Mr van der Woude was not aware of the use of Greyball technology being used in other jurisdictions other than for legitimate business purposes prior to March 2017. However, he did have authority to authorise the use of Greyball technology in other jurisdictions by virtue of his position within the Uber group.
37. TfL sent a further letter on 22 August 2017 to ULL seeking information on which jurisdictions Ms Bertram has operational responsibility for and the directorships held by Mr van der Woude. TfL also sought information about any instances of misuse of Greyball technology for the purposes of interfering with or impeding regulatory enforcement which has taken place in those jurisdictions. Given ULL's vague statements regarding Ms Bertram's discussions on a 'handful of occasions', TfL also sought further information on this.
38. JB replied on 27 August 2017 and stated that Ms Bertram has additional operational responsibilities [REDACTED]



Bertram was the Regional General Manager for Northern Europe and was plainly of sufficient seniority to be regarded as a directing mind of ULL. She first wrote to TfL regarding Greyball on 24 March 2017. Some four months later, TfL has now been informed – after having to enquire repeatedly on this topic – that Ms Bertram was party to correspondence relating to the use of Greyball technology to evade enforcement in other jurisdictions for which she had personal responsibility. Within days of ULL identifying these facts, even though ULL had appointed Ms Bertram as a Director on 18 August 2017, in its letter of 31 August 2017, ULL informed TfL that Ms Bertram had moved on from her role, with an accelerated transition in the United Kingdom and had resigned on 30 August 2017.

45. It is clear from the correspondence received about Greyball that Uber employees in other jurisdictions escalated concerns direct to senior management (including Ms Bertram) regarding allegedly inappropriate action by local law enforcement. The use of Greyball technology was considered a means of addressing these incidents. These discussions took place in 2015, some two years before Uber globally committed to no longer use Greyball for the purposes of evading or impeding regulatory enforcement.
46. The responses of both ULL and JB have been limited and dilatory. Despite several requests for comprehensive information, JB's final letter simply alludes to the possibility of [REDACTED] other [REDACTED] jurisdictions' where Greyball technology might have been used for the aforementioned purposes. It can only be assumed that the [REDACTED] 'relevant jurisdictions' which JB allude to might cover areas for which Ms Bertram had operational responsibility.
47. It is a matter which goes to ULL's fitness to be a licence holder that one of its directing minds knew about the potential and practice for Greyball technology to be used in other markets to impede regulatory enforcement, and in particular that she was party to correspondence about the use of Greyball for that purpose in areas under her operational responsibility. After TfL sought detailed information on this question ULL has failed to respond proactively and provide TfL with sufficient detail to comprehensively assess and understand the scope of this possible issue and its relevance to this jurisdiction.
48. In the absence of any other explanation, TfL infers that ULL's new corporate governance arrangements have been implemented at least in part as a result of the further enquiries made by TfL. We also surmise that the significant changes to the directorship of ULL were also at least in part the result of these enquiries concerning Greyball. ULL's correspondence has not been frank or open (as we would expect between an operator and the licensor/regulator). Furthermore, ULL appears to have recognised that its historic systems and conduct were not satisfactory.

49. Mr van der Woude was a director of ULL until 18 August 2017 when he resigned. ULL informed TfL of his resignation in its letter of 31 August 2017 and confirmed he has no operational responsibility for the London operation. He remains a director of over [REDACTED] other Uber companies. Despite requests for comprehensive information, JB have declined to provide specific information about investigations on use of Greyball technology in jurisdictions for which Mr van de Woude is a director. It can only be assumed that the [REDACTED] 'relevant jurisdictions' which JB allude to might cover areas for which he is a director. We note that press reports refer to the possible use of Greyball technology to impede regulatory enforcement in Australia and South Korea. Mr van de Woude is a director of Uber Australia Pty Ltd and Uber Korea Holdings LLC.
50. It is relevant to ULL's fitness to be a licence holder that its previous director holds directorships in other countries where there is a possibility that Greyball technology has been used for the purposes of interfering with or impeding regulatory enforcement. It has been admitted by ULL that Mr van de Woude had authority to authorise the use of Greyball technology in other jurisdictions by virtue of his position within the Uber group.
51. Although Ms Bertram and Mr van der Woude are no longer Directors of ULL, TfL remains concerned as to ULL's lack of candour in relation to the enquiries made concerning the use of Greyball technology, much of which was provided by JB and Helen Fletcher (Legal Director) on behalf of ULL. As explained in paragraphs 30, 39 and 40 above, there remain gaps and unanswered questions, which means that the full extent of the use of Greyball technology has not fully been addressed by ULL regardless of the identity of the senior management involved. We are also concerned that the changes to governance arrangements and senior management have only been made as a result of the pressure placed on ULL through our correspondence, and not through a desire to ensure that ULL is acting appropriately.
52. In conclusion, while we have been given assurances by ULL that it has not deployed the use of Greyball technology in London for the purposes of evading or interfering with regulation, the same cannot be said of other jurisdictions in which senior members of ULL had responsibility. It has taken extensive correspondence with ULL and JB and there remains a lack of transparency in certain areas. The changes made by ULL with regards to senior ULL officials and the implementation of a strict governance process appear to have been made to satisfy TfL as to their fitness and propriety at the point in time when we are considering their licence application. We consider that this is relevant to ULL's fitness and propriety in at least three respects:
- a) ULL's failure to correspond with TfL in an open, frank and transparent manner on important questions of legitimate interest to TfL as regulator;

- b) The historic conduct of senior staff within ULL who were aware that Greyball technology was being considered as a means of evading regulatory enforcement in jurisdictions for which they had direct responsibility;
- c) ULL's 'reactive' approach, which appears to be driven (at least in part) by TfL's persistence and enquiries.

## **Corporate responsibility**

53. TfL is concerned about a number of ULL's activities and conduct which have an impact on the safety and security of the public and demonstrate a lack of corporate responsibility, and cumulatively, demonstrate that ULL is not fit to hold a PHV operator's licence based on a lack of corporate responsibility. Examples are provided below.

### *Safety and criminal behaviour reporting*

54. On 12 April 2017, the Metropolitan Police wrote to TfL and set out its concerns that ULL had not reported allegations of serious criminal offences by its drivers, and that such behaviour was unacceptable. The Police referred to circumstances in which a driver had committed two sexual offences, neither of which were reported to the Police by ULL. References were also made to several other reports of criminal offences made by passengers to ULL but were not reported directly to the police. In relation to two public order offences, the letter said that the delay in reporting meant that no action could be taken as the period in which proceedings could be brought in the Magistrates' Court had expired. The letter noted that ULL was proactive in reporting lower level document frauds to the Police (as well as to TfL). The letter explained that there were two concerns, firstly that it seems ULL decides what to report; less serious matters / less damaging to reputation over serious offences; and secondly by not reporting to the police promptly ULL allows situations to develop that affect the security and safety of the public. TfL wrote to ULL on 28 July 2017 and sought its response to the Metropolitan Police's letter.

55. ULL stated in its reply of 8 August 2017 that proactive reporting to the police is a sensitive area and that it tries to balance its regulatory and privacy obligations. The letter states that ULL's general policy is that the choice of whether to make a police report is that of the victim, but where appropriate, it will encourage a Rider to report an incident to the police. It reports issues of fraud to the Police because it is the victim. It also states that it complies with its legal obligations to report incidents involving deactivation of a driver to TfL.

56. ULL also set out a number of other activities that it undertakes in relation to collaborative working with the police including a dedicated Law Enforcement Response Team which is responsible for working



directly with the police and other law enforcement agencies to support investigations about incidents involving a partner-driver, or rider on and off the Uber app, a dedicated Law Enforcement Portal, as well as giving examples of ULL's collaboration with the police during terrorist incidents.

57. With regard to the alleged sexual assaults referred to by the police, ULL provided details to TfL of its decision to dismiss the driver on 21 May 2016. Upon notification, TfL immediately suspended the driver on 23 May and notified the police on the same day. Further information was requested from ULL to assist TfL's investigation. However, despite the seriousness of this matter and the need to obtain information urgently, it was necessary to ask ULL to provide the information more than once. It is expected that a responsible operator would respond immediately in respect of matters of public safety to ensure that it can take necessary action against the driver. ULL's approach falls below this expectation.
58. The handling of the matters raised in the letter from the police gives concern to TfL about the importance which ULL attaches to the safety of its passengers. Without these issues being brought to our attention by third parties, such as the police, TfL would not be aware of ULL's approach to these matters. TfL has considered ULL's response and remains concerned about ULL's approach.

#### *Push Doctor*

59. ULL confirmed that between 22 August 2016 and 23 September 2016 it conducted a trial of Push Doctor, an online GP service that is designed to perform medical checks. ULL stated in its letter dated 14 July 2017 that the service was trialled in an attempt "to make use of an innovative solution to save applicants for a private hire driver's licence both time and money". As TfL did not accept medical reports received from driver applicants that had been issued by Push Doctor, ULL ceased directing their drivers to this service.
60. PHV drivers must be medically fit in order to be granted a licence. This means meeting the DVLA Group 2 medical standards which are the same standards applied to other professional drivers such as HGV drivers. Driver applicants are requested to undergo a medical examination with a qualified medical practitioner who has access to their full medical records. The doctor then completes a medical form, which is submitted to TfL. The DVLA is legally responsible for deciding if a person is medically unfit to drive. TfL, using our Occupational Health department, which employs medical experts, assess the contents of the medical form and determine whether the applicant meets DVLA Group 2 medical standards. As part of the medical examination, registered medical practitioners are required to provide information on the form such as the applicant's blood pressure and eyesight. A satisfactory and reliable examination of those kinds would

require an examination in person. Information on existing medical conditions is also required.

61. The medical fitness of PHV drivers is of paramount importance for the public safety of passengers and other road users. The DVLA standards emphasise that safe driving requires the involvement of vision, visuospatial perception, hearing, attention/concentration, memory, insight/understanding, judgement, adaptive strategies, good reaction time, planning/organisation, ability to self-monitor, sensation, muscle power/control and coordination. Injury or disease may affect any one or more of these abilities.
62. We consider that it is obvious that a comprehensive medical examination of the type required for a PHV licence applicant must be conducted in person. ULL's introduction and promotion of a service whereby prospective PHV drivers were medically examined via video link was unacceptable and inappropriate. Approximately 800 applications from new and existing applicants had undergone a medical assessment with Push Doctor via video link. Dealing with these applications caused additional pressure to the licensing system in order to ensure that proper medical assessments were carried out.
63. ULL's letter of 14 July 2017 states that ULL ceased promoting the service once TfL rejected those applications which included medical checks obtained through Push Doctor. While that is true, ULL only did so following an intervention from TfL. Encouraging drivers to undergo medical assessments which are clearly and obviously unsatisfactory demonstrates a lack of regard to public safety and security which gives TfL cause for concern.

*Enhanced criminal records certificates*

64. Applicants for a private hire vehicle driver's licence must obtain an enhanced criminal records certificate (ECRC) from the Disclosure and Barring Service (DBS) which discloses details of any spent convictions or cautions. There are important public protection reasons for this.
65. TfL is a registered body that has statutory powers to apply for ECRCs for applicants of PHV driver's licences. In 2011, TfL appointed another registered body, GBGroup, to obtain ECRCs for PHV applicants on its behalf. TfL's policy at the time was that it would consider ECRCs which have been obtained as part of the recruitment process for another job, provided the ECRC had been issued in the past three months with the same level of checks as required by TfL.
66. In its letter of 14 July 2017, ULL explained that "From March 2015 until recently, ULL suggested the service provider Onfido to those persons enquiring via Uber's 'Ignition' programme to obtain a DBS as part of their Private Hire licence application." TfL's initial position was that it would accept ECRCs which had been obtained by Onfido in

accordance with its policy that it would accept ECRCs for other roles which are no older than three months.

67. However, in late 2016, the DBS highlighted an issue with Onfido obtaining ECRCs, as they were not doing so on behalf of TfL. The DBS, therefore, questioned whether they had legal powers obtain them. Following correspondence with DBS, TfL has adopted a new policy on accepting ECRCs which have not been obtained by GBGroup.

68. During the course of correspondence between TfL and Onfido, Onfido confirmed that its identification checks of drivers were undertaken by ULL. This raised concerns for TfL as to the reliance that it could place on the ECRCs obtained. Checking the identification of the applicant for an ECRC is a crucial element of the ECRC process. ULL was not in a position to conduct those checks independently. TfL has concerns about any private hire operator conducting identification checks as part of the DBS process as we are keen to ensure impartiality. In a letter dated 2 September 2017, ULL stated that "Onfido has provided training to 16 Uber representatives in the DBS application process and requirements in order to enable them to check applicant documents prior to the application being submitted and has advised as to the types of documents which are accepted by the DBS for the purposes of their background check".

69. TfL considers that it is a vital part of the ECRC process that - in order to ensure the accuracy and integrity of the results - identification checks should be carried out independently. A prospective employer (or partner) cannot provide that independent checking service as it compromises the reliance upon which TfL as regulator can place on the results. ULL's approach in arranging for its staff to undertake such checks was unacceptable and demonstrates a lack of regard to the safety and security of passengers. TfL does not consider that ULL took into account the safety of the public using its services when it encouraged drivers and made arrangements for ECRCs to be obtained by Onfido.

## **Conclusions**

70. TfL has concluded that ULL is not a fit and proper person to hold a PHV operator's licence for each of the following reasons:

- a) ULL's provision of materially false information about its booking acceptance process in 2014 and 2015, as compared to the reality as explained in later correspondence and clarified by the IT Architect's Investigation. ULL has attempted to play down the changes. It says that it has not misled TfL and has been consistent in its explanation of the process. However, the evidence shows that this is incorrect. ULL's description of its processes in 2014 was misleading on a material point. (TfL is

currently minded to think the point is determinative, and that ULL's current operating model is accordingly unlawful, but the provision of materially false information is relevant to ULL's fitness and propriety irrespective of this point.) Either ULL knew that the information provided was misleading, or it did not understand its own systems sufficiently (despite assertions to the contrary). In either case, we consider that this is sufficient to undermine ULL's fitness to hold a London PHV Operator's Licence. It is essential, in the interests of protecting the public, that TfL can be satisfied that licensed operators provide accurate, full and frank information that TfL can rely on. The fact that TfL is unable to do so gives us serious concerns.

- b) ULL's responses in relation to Greyball. TfL has had to engage in extensive correspondence to obtain the (still incomplete) information that it has now. There remain questions about the extent to which, how often and where ULL Directors and Senior Managers were aware of the possible use of Greyball to evade regulatory enforcement in other jurisdictions. More importantly, ULL's responses to TfL's questions were partial and/or incomplete. TfL has had to repeatedly pursue and probe ULL on this issue in order to obtain the (still incomplete) picture that it now has. This undermines TfL's confidence in ULL, and in its approach towards its regulator. Consistent with its conduct in relation to other issues, ULL's response to TfL's enquiries has been entirely 'reactive' and the changes to its regulatory systems are not sufficient to give TfL confidence about its fitness and propriety.
- c) ULL's approach to the safety and security of the public, including its approach to reporting serious criminal incidents, and the use of Push Doctor and Onfido, gives TfL serious concerns about its apparent lack of regard to the safety of its customers, such that TfL concludes that it is not fit and proper to hold a licence.

## **Right of Appeal**

ULL may appeal our decision, information on how to do this is enclosed with this letter, please read the notice entitled 'Right of Appeal'.

Section 26(1) of the Act states:

"If any decision of the [licensing authority] 1 against which a right of appeal is conferred by this Act—

- (a) involves the execution of any work or the taking of any action;

(b) makes it unlawful for any person to carry on a business which he was lawfully carrying on at the time of the decision,

the decision shall not take effect until the time for appealing has expired or (where an appeal is brought) until the appeal is disposed of or withdrawn.”

We consider that the purpose of section 26(1), read in context, is to allow an existing licensee such as ULL, whose application for renewal of its licence is refused, to continue to carry on business until such time as its appeal is disposed of or withdrawn. It follows that, where (as here) the decision in question is a decision not to renew a licence, the effect of s. 26 is to treat that decision – for the period until the appeal is disposed of or withdrawn – as if it had been a decision to renew.

### **Additional Information**

If you have any further queries regarding this decision, please contact us via the details contained at the top of this letter. It is important you quote your reference number in all communication with us.

Yours sincerely



Helen Chapman  
**General Manager**  
**Taxi and Private Hire**