

Appellant
T ELVIDGE
Fifth
EX5
4 June 2018

IN THE WESTMINSTER MAGISTRATES' COURT

BETWEEN

UBER LONDON LIMITED

Appellant

- and -

TRANSPORT FOR LONDON

Respondent

FIFTH WITNESS STATEMENT OF THOMAS ELVIDGE

I, Thomas Elvidge, of Uber London Limited (Company Number: 08014782), 1st Floor, Aldgate Tower, 2 Leman Street, London, E1 8FA, WILL SAY AS FOLLOWS

A. INTRODUCTION

1. This is my fifth witness statement in this appeal, and I am authorised to make it on behalf of the Appellant, ULL, in support of its appeal. I do so to put before the Court a small number of factual points relevant to the LTDA's written submissions of 21 May 2018, which address what is often referred to as "cross-border hiring"; in other words, the situation in which a private hire booking made by a passenger to be picked up in the geographical jurisdiction of one local licensing authority is accepted by an operator licensed in the jurisdiction of another licensing authority (and accordingly undertaken by a car and driver licensed by the same licensing authority).
2. Except where otherwise stated, the facts and matters set out in this witness statement are within my personal knowledge. Where they are not, I identify the source of my understanding and belief. In the course of making this statement I shall refer to a number of documents, a paginated bundle of which is shown to me marked "[EX5]". Unless stated to

the contrary, references to documents in this statement refer to this bundle and take the form "[EX5/x/y]", where "x" is the tab number and "y", where relevant, is the page number.

3. In this statement, I have used the same defined terms as in my first and third statements, which are explained in the enclosed Glossary.

B. CROSS-BORDER HIRING

4. UBL has been granted an operator's licence by more than 75 councils across the UK. Our UK strategy has been to identify where there is likely demand for the App and to then seek to obtain a local operator's licence. We want local drivers to sign up to the App in order to carry out local bookings. We believe that is the best way to ensure the best experience for users of the App (both drivers and passengers).

5. There are, of course, areas where we do not have a licence, but where passengers may wish to request bookings and drivers may wish to undertake bookings, and we do not artificially prevent the use of the App in these areas.

6. However, we recognise that there are legitimate concerns that cross-border hiring, while legal, can distance licensing authorities from the activities that they regulate. It is an issue that arises from the nature of the national licensing regime (which permits a licensed driver to undertake bookings anywhere in England and Wales). We believe that there are ways to address it, and, as I illustrate briefly below, we have taken steps to address some of the specific issues that arise.

- (a) In March 2018, we made two key changes to our operating model by introducing nine regions for cross-border hiring purposes. This means, in England and Wales, that:

- (i) trips beginning in the "London Region" (Greater London and parts of the Home Counties) are now only offered to drivers licensed by TfL; and
- (ii) trips beginning in one of the other eight regions we have defined are only offered to drivers within that region.

These changes were developed over a period of several months prior to their implementation and were introduced in response to concerns from licensing authorities about their ability to take effective enforcement action. [EX5/3] This has been a significant overhaul of our business model in regard to cross-border hiring. For those seeking to re-license in a new region in which they mostly work, we provided support, including financial relicensing incentives and waiver of service fees on trips using their new licence, where eligible. [EX5/4] [EX5/5]

- (b) While it is up to individual drivers where they want to be licensed (and, in our experience, they tend to look at the time and cost involved in getting licensed in the licensing authorities near where they live), we encourage drivers to be licensed in the area in which they mostly intend to drive. We identify and contact drivers driving primarily outside their locality and recommend that they obtain a licence in the area in which they spend the majority of their time driving. If they then choose to relicense, we offer to help them with that process. [EX5/7]

- (c) We have begun proactively liaising with authorities and police forces in areas in which UBL holds operator's licences about reporting driver deactivations and potentially criminal behaviour.
- (d) We have also held roundtable discussions with licensing officers in some jurisdictions in which UBL is licensed as an operator. These discussions have explored how we handle complaints and analyse patterns of behaviour so that we can best support licensing authorities in their work. We intend to have similar discussions with other authorities. Again, I explain this in detail in my fourth statement. [Elvidge4/19]
- (e) We support the introduction of other cross-border information sharing and enforcement initiatives, including:
 - (i) A mandatory register of taxi/private hire vehicle drivers who have had their licences revoked or refused. The Local Government Association is now taking this proposal forward and a Bill on this issue, which we support, is currently before Parliament. [EX5/1] [EX5/2] We fully support this proposal. In the meantime, we look forward to the upcoming launch of the (opt-in) register managed by the National Anti-Fraud Network. [EX5/6]
 - (ii) National reform and regional cooperation to harmonise licensing standards, which would mean that passengers - and local authorities - could be confident that all private hire drivers and cars operating in a given area would have met an agreed national standard, regardless of where they were originally licensed.
 - (iii) Delegated enforcement powers: we would welcome action to make it easier for authorities to delegate their powers to regulate drivers they have licensed to each other to facilitate cross-border enforcement.

C. THE APP

- 7. The LTDA makes a number of points about how the App works based on examples in York and Reading, in which UBL has been refused an operator's licence. There are three factual clarifications that I should make.
 - (a) The LTDA refers to short-term financial incentives used in Reading in 2016 to encourage drivers to drive there after UBL had been refused an operator's licence. I can confirm that we no longer use such short-term incentives anywhere in the UK to encourage drivers to drive in areas in which we are not licensed, and we have not done so since March 2017.
 - (b) The LTDA asserts that "Uber uses 'surge pricing' ... specifically to attract 'out-of-town' drivers" to go into areas in which Uber does not have a licence. That is not correct. In fact, surge pricing is a part of the pricing algorithm of the App that applies nationally and is triggered automatically based on live data about how many users are trying to book trips in a given area and how many are willing to undertake those bookings. The effect of increased prices during a period of surge is to discourage

some users wanting to make bookings from doing so, as well as encouraging drivers to undertake bookings.

(c) Similarly, the quick pick-up point in Reading to which the LTDA refers is also an automatic data-driven function of the App that applies nationally: it simply reflects the fact that users have chosen to be picked up from that spot in the past. This is in contrast to venue-specific pick-up points that can be pre-defined by the operator, for example if we agree a specific pick-up location with a local venue (such as a railway station, hospital or shopping centre) to aid traffic flow. There is no such pre-defined pick-up point in Reading.

8. Similarly, as I understand it, one of the LTDA's main points is that, when a passenger opens the App and sees a map showing vehicle icons, each of those vehicles is "continuously advertising its availability for hire and inviting potential customers in the vicinity to commence the process of booking" - referring to a case involving private hire vehicles allegedly plying for hire because they were driving around bearing the name and phone number of the operator. Although I do not mean to accept that it is of legal significance, that assertion seems to be based on some factual errors about how the App works, which I should correct.

(a) It is not possible reliably to identify a specific car as shown on the smartphone screen before booking, because the location of the vehicle icons (which are symbols that do not provide any other information) are based on GPS data that may not be precise, and, where there are multiple available cars in close proximity, the App may represent a number of them with one vehicle icon.

(b) It is not possible to book a specific car using the App. Even if you stand right next to a car whose driver is logged into the App and you make a booking request, you may well not be assigned that particular car. This is because:

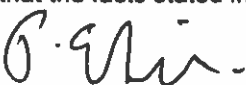
(i) the algorithm for offering bookings to drivers is not purely location based, it is the best match based on various factors, such as the driver who would reach the passenger first (e.g. if their location would require driving around a one-way system) not necessarily strictly the closest driver to the passenger;

(ii) the driver may be relying on his/her "Driver Destinations" feature (which allows drivers twice a day to specify the direction in which they wish to travel) so may not be offered the booking if it is heading in the wrong direction; and/or

(iii) the driver may choose not to undertake the offered booking.

D. STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed: 

Dated: 6 JUN 2018

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**FIFTH WITNESS STATEMENT OF
THOMAS ELVIDGE**

Hogan Lovells International LLP
Atlantic House
Holborn Viaduct
London
EC1A 2FG
Ref C6/CRNB/DS/154231.000031
Tel +44 20 7296 2000

Appellant's solicitors

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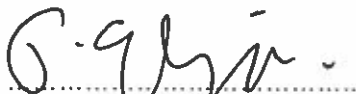
- and -

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EXHIBIT "[EX5]"

This is to confirm that I have seen all of the documents referred to in the Fifth Witness Statement of Thomas Elvidge dated 4 June 2018 in the Exhibit marked "[EX5]".


.....
Thomas Elvidge

Dated 6 JUN 2018