

**IN THE WESTMINSTER MAGISTRATES' COURT**

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

**BEFORE THE SENIOR DISTRICT JUDGE (CHIEF MAGISTRATE)**

**B E T W E E N:**

**UBER LONDON LIMITED ("ULL")**

**Appellant**

**-and-**

**TRANSPORT FOR LONDON ("TfL")**

**Respondent**

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**APPELLANT'S SKELETON ARGUMENT**

**For the hearing of the appeal listed to commence on 25 June 2018**

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**List of recommended pre-reading (time estimate: 1 day)**

- The skeleton arguments [CB/1; 2]
- TfL's decision letter dated 22 September 2017 [CB/3]
- The revised list of issues dated 27 April 2018 [CB/6]
- The witness evidence on behalf of ULL: the first, third and fourth witness statements of Thomas Elvidge [CB/14; 18; 21]; the first and second witness statements of Fred Jones [CB/15; 19]; the first and second witness statements of Laurel Claire Powers-Freeling [CB/16; 20]
- The witness evidence on behalf of TfL: the first and third witness statements of Helen Kay Chapman [CB/17; 22]
- If time permits, ULL's key new policies and procedures [CB/10; 11; 12; 13]

## A. INTRODUCTION

1. ULL appeals pursuant to s.3(7)(a) of Private Hire Vehicles (London) Act 1998 (“**the Act**”) against the decision of TfL communicated by a letter dated 22 September 2017 (“**the Decision**” and “**the Decision Letter**”) to refuse to grant ULL’s application for renewal of its private hire vehicle (“PHV”) operator’s licence. TfL made the Decision on the ground that it was not satisfied, as at 22 September 2017, that ULL was a “*fit and proper person*” to hold a PHV operator’s licence for the purposes of s.3(3)(a) of the Act. [AB/5/142]
2. This appeal is not an attack on TfL’s Decision. ULL now fully accepts that the Decision was justified. There was insufficient evidence before TfL at that time to satisfy it that ULL had identified and accepted its past mistakes, and done enough to address TfL’s proper consequential doubts as to ULL’s fitness and propriety. ULL (and the wider Uber group) have since acknowledged and apologised for their past mistakes and made far-reaching changes to address them. Thus, the task facing this Court is to judge ULL’s fitness and propriety *now*, in light of how it operates now, taking full and fair account of all the progress ULL has made since the time of the Decision, and given the strength of its commitments (and safeguards) as to how it will conduct itself in the future. [AB/5/142]
3. In particular, ULL has taken concerted steps to improve its business practices and critically examine its culture after listening very carefully to and seeking to act upon TfL’s concerns. Even before the Decision, both ULL and the Uber business globally had recognised that changes were necessary and had started to embark on a programme of cultural and governance change, led by the appointment of a new global CEO, Dara Khosrowshahi. Since the Decision, and in part due to ULL’s reflection on the failings that TfL - and ULL for its own part - identified, this process has significantly gathered momentum and speed. ULL has worked extremely hard to demonstrate its commitment to change and to take concrete measures to provide assurances for the future regarding its fitness and propriety. ULL has: reflected on its past conduct and dealings with TfL; recognised its previous mistakes and sought to remedy them; changed its senior leadership; strengthened its governance arrangements; clarified and secured its relations with other companies in the Uber group; updated and improved its policies in a wide range of areas; and is taking

steps to transform its corporate culture. The key measures that it has taken are summarised in Annex B to this skeleton.

4. It now falls to the Court to decide whether ULL has done enough. ULL's case on this appeal is that there is now sufficient tangible evidence of the kind of necessary, sincere and effective change required to satisfy the Court of its fitness and propriety to hold a PHV operator's licence, and to continue to serve the millions of passengers and tens of thousands of drivers who rely upon it to go about their daily lives in London.
5. However, ULL is under no illusion that it is only with the test of time that these changes will allow it to build a relationship of trust with TfL. That is why ULL has decided only to seek a licence renewal for a restricted period of 18 months, subject to such additional conditions as the Court thinks fit. ULL accepts, it hopes realistically, that the serious mistakes it has made in the past produce lingering doubts which will take time fully and finally to address to the satisfaction of TfL, such that a probationary period of licensing providing for on-going enhanced scrutiny and a re-assessment is appropriate.
6. The steps that ULL has taken mean that the issues in this appeal have narrowed considerably since the Decision Letter. The relevant issues are summarised in the revised list of issues dated 27 April 2018 ("**the Revised List of Issues**"). [CB/6] In essence, the Court is invited by ULL and TfL to consider whether, in light of the various changes ULL has made and committed to make and the issues set out in the Revised List of Issues, ULL is now a fit and proper person to hold a PHV operator's licence. Both ULL and TfL take the view that this is a matter for the Court's assessment alone in light of all of the evidence before it (and in particular new evidence, which was not before TfL at the time of the Decision).
7. The particular issues in the appeal relate to ULL's relevant changes and current processes addressing:
  - (1) Corporate responsibility in relation to issues having potential safety implications, particularly in the context of its previous approach to (a) reporting allegations of potentially criminal behaviour to the Metropolitan Police; (b) facilitating prospective drivers obtaining medical reports from

Push Doctor between 22 August 2016 and 23 September 2016; and (c) facilitating prospective drivers obtaining enhanced criminal record checks through Onfido between approximately April 2016 and April 2017;

- (2) The provision of information to TfL, particularly in the context of its past approach to providing information to TfL in respect of (a) the process by which bookings were accepted under its operating model; and (b) in respect of the potential misuse of “Greyball” technology in jurisdictions outside the United Kingdom;
- (3) Certain further matters identified by TfL since the time of the Decision Letter principally in relation to other companies within the Uber group, namely (a) a breach of data security in late 2016 which affected Uber users in the United Kingdom; and (b) the use of “Ripley” software to remotely lock devices during unexpected visits by government departments in jurisdictions outside the United Kingdom.

8. In relation to these matters, the Court will hear evidence from:

- (1) Three witnesses on behalf of ULL: (a) Ms Laurel Claire Powers-Freeling, an independent non-executive director of ULL and Chair of the ULL board of directors since November 2017; (b) Mr Thomas Elvidge, an executive director of ULL and General Manager for Uber in the UK and Ireland; and (c) Mr Fred Jones, an executive director of ULL, and Head of Cities for the UK and Ireland; and
- (2) One witness on behalf of TfL: Ms Helen Kay Chapman, TfL’s Interim Director of Licensing, Regulation and Charging.

9. ULL’s position in summary is that in light of all of the evidence available since the time of the Decision:

- (1) the Court can be satisfied - on the basis of the totality of the *current* evidence, *now*, in June 2018, not on the basis of the evidence as it stood before TfL in September 2017 - that ULL is a fit and proper person to be granted a PHV operator’s licence;

- (2) the Court should allow the appeal accordingly; and
  - (3) ULL should be granted a PHV operator’s licence until the end of 2019, subject to such conditions as the Court deems appropriate.
10. The remainder of this skeleton argument addresses (1) the Court’s approach to this appeal; (2) the relevant factual background, including an overview of ULL’s active liaison with TfL and the various changes ULL has made to its business; and (3) the specific issues concerning ULL’s fitness and propriety raised in these proceedings. Annex A contains a detailed summary of the relevant legal framework.
11. This skeleton argument does not address the potential licence conditions to which ULL might be subject. In accordance with the Court’s recent direction, ULL and TfL are due to file a list of agreed and non-agreed potential licence conditions by 14 June 2018, and to make brief written submissions on areas in dispute by 20 June 2018.

**B. THE COURT’S APPROACH TO THIS APPEAL**

12. By way of background, Annex A contains: a summary of the Act and the Private Hire Vehicles (London) (Operators’ Licences) Regulations 2000 (“**the Regulations**”); how these provisions apply specifically to operators; and a summary of the relevant case law and how it informs the Court’s approach to the appeal, generally, and to the issue of fitness and propriety, specifically. [AB/7]
13. In essence, this appeal operates as a complete rehearing of ULL’s application for renewal of its PHV operator’s licence. The Court is required to take account of all the evidence now available. Strict rules of evidence do not apply.
14. The question for the Court is simply whether, taking the Decision into account, it is satisfied that the Decision is now “wrong” on the basis of all the evidence available to it as at June 2018: see *R (Hope and Glory Public House Limited) v Westminster Magistrates’ Court* [2011] EWCA Civ 31. [AB/28]
15. Answering that question requires the Court to assess whether it is satisfied that ULL is a fit and proper person to hold a PHV operator’s licence. That assessment involves deciding whether ULL can be trusted to run the business of a PHV operator in a competent and law abiding manner, in accordance with its regulatory obligations

and the conditions of any licence granted. It includes an assessment of whether ULL is suitably honest and trustworthy and can be relied upon to provide the service of a PHV operator for the benefit of the public.

16. In the light of the legal background summarised in Annex A, ULL contends that the approach of the Court to the appeal should be informed as follows:

- (1) The principal objective of the Act is public safety. The Act, together with the Regulations, seeks to ensure so far as possible that all those licensed to operate in London are suitable persons to do so, who can be relied on to run the business of an operator in an honest, competent and law abiding manner, in accordance with their regulatory obligations and the conditions of any licence granted.
- (2) Considerations of public safety should therefore be borne in mind (but not to the exclusion of other relevant matters). Regard should be paid both to ULL's willingness to comply, and the Court's assessment of its ability to comply with its regulatory obligations as an operator, including any conditions the Court may be minded to include in any licence.
- (3) The Court is entitled to consider:
  - i) ULL's record of compliance with the statutory obligations imposed on all operators.
  - ii) The character, knowledge and experience of ULL's directors and senior officers who run its licensed business.
  - iii) The matters that have given TfL cause for concern, both those expressed in the Decision and the issues subsequently identified by TfL in this appeal (namely the breach of data security and the use of Ripley software). These include the activities of other Uber group companies insofar as their activities have in the past or may in the future threaten to affect or in fact affect the proper conduct of ULL's licensed business and its ability to comply with its regulatory obligations as an operator.

- iv) ULL's responses to these matters, individually and collectively, including:
  - a) whether its acceptance that it has made mistakes and has got things wrong is genuine;
  - b) whether its expressed commitment to change (and that of the wider Uber group) is genuine;
  - c) the changes ULL has made to its business, including changes to its governance arrangements, substantive policies, and corporate culture; and
  - d) whether the steps it has taken and will continue to take to address the matters which have concerned TfL (and which includes the conditions offered by it to provide additional assurance) will address those concerns.

17. ULL submits, for the reasons given herein, that the Court can be satisfied, on the evidence before it, that ULL is a fit and proper person to hold a PHV operator's licence. Its contrition is genuine, not contrived; its commitment to change is real, not illusory. The changes it has made are substantive and effective. Public safety is protected. ULL has worked hard, and will continue to work hard during any future licence period, to regain trust and become a trusted partner. That process of rebuilding trust with TfL is evidently not complete; but it is sufficiently advanced that ULL can be safely trusted to run a PHV licensed operation in a competent and law abiding manner, in accordance with the conditions of any licence granted, particularly in circumstances where the case against it does not rest upon breaches of its operating conditions or of the prohibitions contained in the Act.

18. The Court should consider the proper factual context for this appeal. This includes, in particular, the past failings that ULL has readily owned up to, and apologised for, the concerted steps ULL has taken following the Decision to liaise with TfL in order to understand and address its concerns, the far reaching and substantive changes it has made to its business, and the steps it has taken to embed and review change.

## The Passenger App, ULL and its rapid growth

19. ULL has for some six years fulfilled the function of a PHV operator in London in respect of bookings made by passengers using the Uber Passenger App. (Elvidge 1 at §37) At the touch of a button, the App gives access to safe, affordable and reliable transport. Its design employs numerous features to enhance passenger safety and assurance (Elvidge 1 at §45). **[CB/14/135]**

- (1) On selecting a destination, the App shows you how long a vehicle will take to arrive, the estimated time of arrival at your destination, and the estimated fare.
- (2) Once a driver has confirmed their availability and willingness to carry out the trip, the App shows you their name, photograph, TfL driver's licence number, together with the make, model and registration number of their vehicle.
- (3) You can track your driver's progress to the pick-up point and can share your trip details with friends or family, including your current map location, all in real-time.
- (4) When your driver is about to arrive, and then does arrive, at the pick-up point you are notified, so there is no need to stand outside awaiting their arrival.
- (5) If you have any issues with your trip, they are rapidly resolved by use of a highly developed complaints system, through the App.
- (6) Your ride is cashless, and when completed, you receive an email recording the trip details, including your driver's name, route taken and the fare charged.
- (7) You are asked to rate your driver (and they, you), the Uber rating system meaning that issues regarding drivers (and, indeed, passengers) are picked up quickly.
- (8) The App records comprehensive data on each trip, including detailed GPS data and ULL can itself be in constant contact with passengers and track the



vehicle and driver throughout the trip. (Elvidge 1 at §45) [CB/14/135]

18. ULL is a wholly-owned subsidiary of Uber International BV, a holding company established in the Netherlands. Uber International BV is itself ultimately owned by Uber Technologies Inc. (“UTI”), the ultimate parent company for the Uber group (Elvidge 1 at §27 and 33). [CB/14/132-133] Uber BV (“UBV”), a company established in the Netherlands, licenses the App in the United Kingdom, contracts with drivers who undertake trips booked via the App, and acts as a data controller in respect of data submitted through the App (Elvidge 1 at §34-35). [CB/14/133]
19. ULL first obtained a PHV operator’s licence from TfL on 31 May 2012 (Elvidge 1 at §47). [CB/14/137] The licence was granted for a five-year term. At that time, ULL was a very small enterprise, and employed only a handful of people (it now employs approximately 300). Even by the end of 2012 there were only some 300 drivers registered to use the Uber App to provide services in London (Elvidge 1 at §44(a)). [CB/14/135]
20. In the following 6 years, ULL’s business has grown exponentially, directly as a response to the popularity of the App with millions of Londoners. In that period no less than 9.1 million users have registered to use the Passenger App in the London area, and in one ‘snapshot’ 12 week period earlier this year, just under 3.6 million users took a trip booked with ULL (Elvidge 1 at §44). [CB/14/135] Further, by February 2018 approximately 48,000 drivers had registered to use the Uber Driver App in London (Elvidge 1 at §44(b)). [CB/14/135] The vehicles in which they drive are modern, clean and efficient; indeed around 50% of miles driven by drivers using the App each week in the UK are in Hybrid or Zero Emission vehicles (Elvidge 1 at §46) [CB/14/136]. Many drivers also offer services specifically for vulnerable passengers or those requiring assistance (e.g. UberASSIST) or those requiring a wheelchair accessible vehicle (e.g. UberACCESS), at the same cost to the passenger as the standard (UberX) service (Elvidge 1 at §45(e)). [CB/14/135] Disability charities have pointed to the benefits disabled persons get by their ability to order an accessible car to their home, within minutes, through the App (Elvidge 1 at §45(e)). [CB/14/135]

21. In summary, in a short space of time, the App has become integral to the way in which large numbers of people choose to get around London, and how they choose to make a living.

## **The renewal applications**

### First renewal application

22. On 28 February 2017, ULL applied to renew its PHV operator's licence (Elvidge 1 at §48). [CB/137] Ms Jo Bertram was specified as ULL's nominated representative in respect of this application. Ms Bertram had established Uber's UK business and was at that time Uber's Regional General Manager for Northern Europe (responsibilities now subsumed into the wider role to which Jamie Heywood has recently been appointed) (Elvidge 4 at §9), [CB/21/371] and the General Manager responsible for the United Kingdom and Ireland (a role now fulfilled by Tom Elvidge). There followed correspondence between ULL and TfL in the context of the renewal application. The issues traversed in the correspondence included allegations made in the media in the United States relating to the potential misuse of a form of technology known as "Greyball". [HB/2/67; 68; 72]
23. On 26 May 2017, TfL informed ULL that it would issue ULL with a PHV operator's licence for a four-month period expiring on 30 September 2017. [HB/3/74] TfL concluded at that time that, based on the information available, ULL was in fact a fit and proper person. [HB/3/74/1072] However, TfL also made clear that it was pursuing ongoing enquiries in relation to various matters. The renewed PHV operator's licence commenced on 31 May 2017.
24. As from 26 May 2017 onwards, there was further correspondence between TfL and ULL in relation to various matters concerning TfL's ongoing investigations. TfL asked ULL a number of searching and difficult questions including on matters such as the potential misuse of "Greyball" in jurisdictions outside of the United Kingdom and the knowledge of ULL staff of the same, and in respect of information ULL had previously provided as to the process by which bookings are accepted under its operating model. [HB/3/74; 78; 83; 94; 98; 100]
25. During this period, ULL had already begun to reflect on how it might seek to

provide TfL with further assurance concerning its fitness and propriety. In particular, by a letter dated 4 August 2017, ULL made a number of specific commitments to improve its corporate governance arrangements in the future. [CB/15/193-194] [HB/3/87]

### Second renewal application

26. On 18 August 2017 ULL applied further to renew its PHV operator's licence (Elvidge 1 at §55). [CB/14/138-139] Mr Elvidge was the nominated representative of ULL named on the application. This reflected governance reforms within ULL which were already in train at that time and recognition that ULL's licensed activities needed a change of leadership. Whilst Ms Bertram was initially listed in the application as a named director of ULL, soon after the submission of the application Ms Bertram resigned her directorship<sup>1</sup> (Elvidge 1 at §55, 56, 58). [CB/14/138-139]

### **The Decision**

27. On 22 September 2017, TfL sent to ULL the Decision Letter. [CB/3] TfL took the view that ULL was not a fit and proper person for three main reasons: (1) TfL was concerned that ULL had misled TfL in correspondence in 2014 in respect of the process by which bookings are accepted under its operating model, and had provided inaccurate information to the High Court; (2) TfL did not consider that ULL had been sufficiently open or transparent in providing information in relation to Greyball; and (3) TfL took the view that ULL had demonstrated a lack of corporate responsibility in relation to a number of other issues which had potential public safety implications.
28. ULL's initial public reaction to the Decision was wrong. ULL sought to criticise the Decision and launch a public campaign to obtain support for the re-instatement of its licence. Although that campaign obtained almost 1 million signatures, ULL regrets its immediate reaction. As Mr Elvidge states: *"I regret our initial public reaction to the immediate media focus after the Decision. We should have recognised straight away that we had not done enough to evidence the necessary changes having been implemented, and of their being sincere and effective. Our reaction spoke of the frustrations (many self-inflicted) that we felt and not of the understanding that we should have shown"* (Elvidge 3 at §8).

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<sup>1</sup> She later left Uber entirely (Elvidge 1 at §§58; 119, 127(b)). [CB/14/139; 158; 162].

[CB/18/325] The Decision did, however, lead to further and intense internal reflection within ULL on its past conduct and on how it could demonstrate that it was fit and proper to discharge the trust that so many members of the public and partner drivers placed in it.

29. The Decision also came at a time of significant change within the Uber business globally, which had been set in train earlier in the year. By September 2017, an extensive external recruitment process had led to Mr Dara Khosrowshahi being appointed the CEO of UTI, and the head of the Uber business globally. He arrived with a mandate to change Uber's way of doing business and its reputation. As Mr Jones notes, *"Mr Khosrowshahi has been very clear from the start that he intends to realign Uber's culture and governance entirely, and that he expects Uber's operations in each of the countries in which it operates to follow suit"* (Jones 1 at §11). [CB/15/193] Soon after taking charge, Mr Khosrowshahi wrote an open letter to Londoners, apologising for Uber's mistakes globally and committing to change. [HB/3/113]
30. Since the time of the Decision, ULL has sought to engage in a constructive dialogue with TfL to better understand its particular concerns, to propose steps to remedy and address those concerns, and to rebuild trust. The Uber business globally, and ULL in particular, has also embarked on a process of wide-ranging change to its business.

#### **Liaison with TfL**

31. There have been numerous meetings and discussions between Uber, ULL and TfL at the very highest levels over a period of many months. Each of Mr Khosrowshahi and Ms Powers-Freeling (ULL's new Chair) has met with the TfL Commissioner. There have also been numerous meetings between senior operational managers and between technical and legal teams (Elvidge 1 at §61; Powers-Freeling 2 at §22). [CB/14/141] [CB/20/365] This process of discussion has better enabled ULL to understand TfL's concerns and to propose steps to address those concerns.
32. During the course of this engagement, ULL has prepared and discussed with TfL a number of submission documents covering its licensed operations, its culture and governance and a number of contextual issues. In each case, ULL has presented to TfL a draft for discussion, TfL has then provided comments on the draft, and ULL

has then sought to amend the submissions in light of the comments received. In particular:

- (1) Between 15 and 17 November 2017, ULL provided TfL with an Application Submission, Submissions on Contextual Issues, and a Licensing Submission; **[HB/3/139; 140] [HB/4/143; 144]**
  - (2) On 1 December 2017 ULL provided TfL with an Operating Submission; **[HB/4/162]**
  - (3) Between 11 and 12 January 2018, ULL provided TfL with an updated Operating Submission, a Culture and Governance Submission and an updated Licensing Submission; **[HB/4/188; 189; 191]** and
  - (4) On 30 January 2018, ULL provided TfL with an updated Culture and Governance Submission. **[HB/5/206]**
33. Mr Elvidge discusses the various submissions in Elvidge 1 at §60. **[CB/14/140-141]** ULL has made genuine and far-reaching commitments to TfL, including commitments to proactively provide TfL with information on any issues in which it has interest as a regulator, to provide TfL with advance notification of proposed changes to ULL’s operating model and practices<sup>2</sup>, and to undertake a series of corporate governance changes. ULL has also reaffirmed its *“commitment to being a long term partner of TfL, with a relationship built on openness, transparency and trust, and our recognition of the need to go over and above the strict letter of our licensing requirements”* (Elvidge 1 at §60(e)). **[CB/14/141]**
34. TfL has welcomed this dialogue. As Ms Chapman states: *“It has been evident to me and others in TfL that ULL has adopted a new approach to engagement with TfL as the regulator of the London PHV sector...ULL has sought through discussions with TfL to obtain detailed feedback on the reasons for TfL’s Decision and to understand how it might alter its behaviour and approach...”* (Chapman 1 at §§222-3). **[CB/17/283-284]** She confirms that this process of engagement and the commitments made by ULL during the process have caused issues in these proceedings to narrow (Chapman 1 at §225). **[CB/17/285]**

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<sup>2</sup> Although ULL acknowledges that it is already subject to certain notification requirements pursuant to regulation 9(13) of the Regulations. **[AB/11A/234A]**

## Changes made to ULL's business

35. Over the same period, ULL has made and continues to make significant changes to its business and its relevant policies not only in order to provide greater assurance in relation to its fitness and propriety and to address TfL's specific concerns, but also because ULL considers it is right to make these changes and wishes to achieve industry-leading best-practice.
36. The relevant changes have been made not only as a result of engagement with TfL, but also after obtaining professional advice and assistance from independent third parties. In particular, from August 2017, Deloitte were instructed to conduct a review and assessment of ULL's policies, processes and governance arrangements. As Mr Jones notes, "*Deloitte were specifically engaged to conduct a root and branch review of our business governance and policy framework to identify and address areas in which ULL fell short of best practice*" (Jones 1 at §30). [CB/15/197] It is relevant to ULL's fitness and propriety and its commitment to change that it has sought help and acted on the advice it has received.
37. The overarching changes that ULL has made to its business can be summarised under the following headings: (1) the regularisation of relations between ULL and other companies within the Uber group; (2) structural changes to ULL's internal governance arrangements; (3) the appointment of new personnel; (4) the adoption and implementation of new substantive policies; and (5) broader cultural changes.

### (1) Relations between ULL and other companies within the Uber group

38. ULL has recognised that its ability independently to discharge its regulatory responsibilities must be respected and secured so that the activities of the wider Uber group of companies do not impede ULL's ability to perform its functions as an operator in London.
39. As a first step, ULL produced a set of principles that would regulate the relationship between ULL and other companies within the Uber group, and UTI in particular. [HB/5/206/1952-1953] The principles are summarised in Jones 1 at §26. [CB/15/196-197] They include recognition by UTI that it should take steps to ensure that ULL can meet its regulatory obligations, that its actions that might impact ULL's business

(including product changes, structural or operational changes, and information about material events) should be communicated to the ULL Board in a timely manner, and that in the event of a conflict between the interests of UTI and ULL's regulatory responsibilities, ULL may have an independent duty to report its concerns to regulators.

40. ULL thereafter went further and introduced a compliance protocol dated 25 February 2018 ("**the Compliance Protocol**"), which formalises important aspects of the relationship between ULL and other companies within the Uber group and protects ULL's independence and ability to acquire relevant information to discharge its regulatory responsibilities. **[CB/10]** The Compliance Protocol has been endorsed by the Board of ULL, Uber's global CEO, COO and CLO, as well as the Vice-President for Europe, Middle East and Africa (Jones 1 at §27). **[CB/15/197]** The Court is invited to review the Compliance Protocol. ULL notes the following key features:

- (1) The purpose of the Compliance Protocol is to ensure that the management and operational arrangements of the Uber group of companies, including those associated with the Uber App, support compliance by ULL with (a) its legal and regulatory responsibilities as the holder of a PHV operator's licence and (b) the specific commitments that ULL has made to TfL.
- (2) The Compliance Protocol sets out certain key principles to which companies within the Uber group have committed. In particular,
  - i) The fifth key principle seeks to ensure that ULL is provided with timely information concerning matters which may be relevant to its regulatory responsibilities: *"Any proposed or actual act, omission or conduct of UTI or UBV which might impact the business of ULL...(e.g. product changes, structural changes, communication of material events etc.), and which could therefore potentially impact compliance with PHV Responsibilities, will be communicated to the ULL Board... in a timely manner and, wherever reasonably practicable, in advance"* (paragraph 3.5). **[CB/10/43]**
  - ii) The second key principle seeks to guarantee ULL's autonomy to deal with matters of potential regulatory concern and its ability to

communicate proactively, accurately and fully with its regulators: *“Should the ULL Board... have any concerns with respect to PHV Compliance that they consider should be raised with the relevant regulators they shall, notwithstanding any other provision of this Protocol or any other legal, management or operational consideration, raise such matter with the relevant regulator. It shall be a matter solely for the ULL Board...to determine: (a) the timing and content of any such communication with a regulator; and (b) whether UTI or UBV should be notified or involved in such communication”* (paragraph 3.2). [CB/10/42] ULL can and will report independently to TfL if it needs to do so: see Elvidge 1 at §124; Powers-Freeling 1 at §20; and Jones 1 at §28. [CB/14/160] [CB/16/215] [CB/15/197]

- (3) Practical arrangements are specified to give effect to the key principles. These include the designation of specific office-holders within each of ULL, UTI and UBV to have responsibilities under the Compliance Protocol (paragraph 2.2), [CB/10/41-42] the maintenance of appropriate logs of information that may be relevant to ULL’s activities, specific procedures for the communication of information to ULL concerning product changes and potentially material events (including potential breaches of data protection requirements) (paragraphs 6 and 7), [HB/10/44-46] the establishment of a Compliance Working Group to provide a forum for the exchange of information (paragraph 10.1 and 10.2), [HB/10/47] and the establishment of a Compliance Steering Group and Compliance Supervisory Group to review the operation of the protocol on a quarterly and annual basis respectively (paragraphs 10.1, 10.4, 10.5). [HB/10/47]
41. Companies within the Uber group have also taken steps to implement the Compliance Protocol. In particular: (1) each of UTI, UBV and ULL have appointed persons to fulfil functions under the Compliance Protocol (Jones 2 at §§19-21); [CB/19/351] (2) meetings of various groups established under the Compliance Protocol have been scheduled and the Compliance Working Group has already begun meeting on a monthly basis as from 10 April 2018: (Jones 2 at §22; Elvidge 3 at §32); [CB/19/351] [CB/18/329] and (3) each of them has been involved in “dummy run” exercises to test the effectiveness of the Compliance Protocol, organised at the



initiative of Ms Powers-Freeling (Powers-Freeling 2 at §16); [CB/364] two such exercises have now been completed and assessed (Elvidge 4 at §5-7). [CB/21/370-371]

(2) Structural changes to ULL's governance arrangements

42. As well as formalising its arrangements with other companies in the Uber group, ULL has made structural changes to its internal governance arrangements.

(1) ULL's board of directors ("**the Board**") has been strengthened by the appointment of three non-executive directors, one of whom acts as Chair of the Board. None of those individuals has previously been involved with ULL's business. They are able to bring independent scrutiny and objective insight. ULL's Articles of Association have also been amended to include explicit reference to the responsibility of the Board and of each director to have regard to the best interests of ULL in maintaining and complying with the PHV operator's licence: see Article 6A(6) and Jones 1 at §21. [HB/3/127/1361-1362] [CB/15/195]

(2) A sub-committee of the Board ("**the Sub-Committee**") has been established to have primary responsibility for matters related to ULL's licence, including compliance, but without prejudice to the Board's overarching responsibilities. The Sub-Committee meets immediately prior to the monthly meetings of the Board. It is chaired by a non-executive director who chairs the Board and all members of the Board are currently members of the Sub-Committee. The terms of reference of the Sub-Committee explain that its role is to review, monitor and ensure compliance with UK licensing requirements, effectiveness of compliance controls and training, to escalate serious compliance matters to the Board, and to oversee ULL's relationship and interaction with regulators (Jones 1 at §22). [CB/15/195]

(3) A licensed operations management committee ("**LOMC**") has been established to support the work of the Sub-Committee and the Board. The LOMC provides a forum in which the executive members of the Board and those staff within ULL most heavily involved in licensed operations and compliance can meet and discuss issues. The first meeting of the LOMC was held on 29 September 2017, and it agreed to meet weekly thereafter (Jones 1 at

§17). [CB/15/194] The LOMC was formally established by the Board on 23 February 2018, and now has formal terms of reference (Jones 1 at §17). [CB/15/194] By February 2018, it had already met 20 times and discussed a wide-range of matters and prepared monthly reports for the benefit of the Sub-Committee (Jones 1 at §18). [CB/15/195] As Mr Jones confirms, the LOMC “ensures that decisions that might once have been made by an individual are now scrutinised from several points of view and that important matters are escalated to the Sub-Committee for consideration and decision by those with ultimate responsibility for ULL’s licence and regulatory compliance and with fiduciary duties in that regard” (Jones 1 at §19). [CB/15/195]

(3) Appointment of new ULL personnel

43. These structural changes have been supported by the appointment of new, experienced and independent personnel at the most senior levels in ULL’s business.
44. Ms Powers-Freeling was appointed as an independent non-executive director and the Chair of the Board as from 1 November 2017. She summarises her background in Powers-Freeling 1 at §§6-8, [CB/16/211] including her previous roles on the board of Marks & Spencer and on the Court of Directors of the Bank of England. She has extensive experience of highly regulated activity, particularly in the financial services sector, and explains how she believes her background should be of real value to ULL at §9(c). [CB/16/212] Ms Powers-Freeling emphasises her independence and accountability: “I do see myself as a backstop of responsibility for ULL, a sounding board and a guiding voice for the management team and the company” (Powers-Freeling 1 at §11). [CB/16/214]
45. Since her appointment, Ms Powers-Freeling has been actively involved in the Deloitte review, having met with them independently, and made suggestions for improvements to policies and processes (Powers-Freeling 1 at §17). [CB/16/215] She has also been a driving force behind further changes to ULL’s business that built on that review including (1) championing the importance of clear mechanisms governing cooperation between ULL and UTI and other companies within the Uber group which led to the adoption of the Compliance Protocol (Jones 1 at §26 and Powers-Freeling 1 at §§18-25); [CB/15/196-197] [CB/16/215-217] and (2) speeding up the process of recruiting additional non-executive directors (Powers-Freeling 1 at

§17). [CB/16/215] She remains continually and actively involved with the conduct of ULL's business: *"I probably communicate with some member of the senior team at ULL/UBL most days"* (Powers-Freeling 2 at §12). [CB/16/214]

46. As of 18 April 2018, two further non-executive directors were appointed to the Board (Jones 2 at §18). [CB/19/350-351] These are (1) Mr Roger Parry, who is the Chairman of YouGov, has held a number of previous executive roles and has written a book on the role of good leadership in building sustainable companies (Powers-Freeling 2 at §8(a)); [CB/20/362] and (2) Ms Susan Hooper, who has experience of a number of board positions in regulated industries and central government (Powers-Freeling 2 at §8(b)). [CB/20/362-363] The collective experience of ULL's three non-executive directors is very great: throughout their careers they have been members of approximately 60-70 different boards, in various capacities, in respect of a range of different types of companies, including those operating in heavily regulated industries subject to strict licensing requirements (Powers-Freeling 2 at §§9-10). [CB/20/363]

47. As well as the changes at Board level, ULL has now also recruited a new UK Head of Compliance, Mr James Heaton-Smith, who has a background in compliance including in the British Army and at the Bank of England (Elvidge 4 at §8). [CB/21/371] He will be responsible for ULL's compliance programme and, in particular, for an independent assurance procedure (addressed in further detail below) pursuant to which there will be an external evaluation of the effectiveness of ULL's policies and procedures for the benefit of the Board (Elvidge 3 at §36; Jones 2 at §23-24). [CB/18/330] [CB/19/351]

48. Commenting on the various changes to governance structures and personnel, Ms Chapman of TfL has noted as follows *"I consider these are changes, that, in principle could improve ULL's ability to meet its regulatory obligations and that ULL will be subject to greater oversight and challenge in respect of its operations"*, although she noted that it was difficult to assess the practical consequences of those changes at the time of giving her evidence in March 2018 (Chapman 1 at §234). [CB/17/288]

(4) Adoption of new substantive policies

49. ULL has also introduced a range of new substantive policies and procedures. These

policies are continually reviewed and improved. They are intended to promote clear internal governance arrangements, to ensure the highest appropriate level of internal supervision of potential decisions that may have regulatory consequences, and to entrench a process of systematic, early and proactive communication with TfL in relation to matters that may give rise to regulatory concerns.

50. The governance & policy framework manual dated 18 April 2018 (“**the Governance Manual**”) was initially launched internally on 21 February 2018. [CB/13] It is a 60-page manual which is intended to provide a guide to ULL’s new governance arrangements in one place and in an accessible format, in order to ensure effective application and a consistency of approach (Jones 1 at §32(a)). [CB/15/198]
  
51. The product and process change management policy dated 18 April 2018 (“**the PPCM Policy**”) provides a framework for managing certain changes to ULL’s business, including changes to its critical processes, procedures, policies and personnel and to products or software used or available for use by ULL. [CB/12] It has been developed in recognition of the fact that such changes can impact on ULL’s ability to conduct its business and fulfil its regulatory obligations and that TfL should be pro-actively consulted on particular types of changes before they are implemented. In summary, the PPCM Policy provides for:
  - (1) A procedure for the stakeholder (internal/external) and business impact assessment of proposed changes against specified criteria, including regulatory compliance. It explains the process by which the ULL legal team will evaluate the change to assess its regulatory impact and the procedure by which changes are considered by the LOMC. It also explains the basis on which matters should be referred to the Sub-Committee or the Board. [CB/12/58] This ensures a high level of independent oversight by senior personnel, including the independent non-executive directors.
  
  - (2) A procedure to notify TfL of relevant proposed changes before they are implemented. The responsibility for deciding whether there is a need to notify TfL of a particular proposed change falls upon either the LOMC, the Sub-Committee or the Board. The PPCM Policy also specifies mandatory requirements in relation to the content of any notification. These include explaining to TfL the rationale for a proposed change, its impact on drivers

and passengers, and steps taken to mitigate such impact. [CB/12/61]

- (3) Procedures for the implementation of changes. Once changes falling within the scope of the PPCM Policy are implemented, there are continuing obligations to monitor and review those changes. [CB/12/62]
- (4) The PPCM Policy is to be reviewed annually by the LOMC and updated as required.

52. The breach reporting policy dated 18 April 2018 (“**the Breach Reporting Policy**”), codifies the approach that should be taken by anyone within ULL who identifies a potential regulatory breach, defined very broadly to include both a breach of a regulatory requirement and a failure to comply with an internal policy. [CB/11] It sets out the specific internal and external steps that should be taken in light of the nature of the particular breach. The purposes are two-fold: first, to ensure that ULL is able to identify any failures of its process and to address them internally; and, second, to ensure that TfL is promptly informed of potential breaches of regulatory requirements in all cases where it is necessary or appropriate to do so. The Breach Reporting Policy contains a procedure under which potential regulatory breaches are drawn to the attention of the LOMC and/or Sub-Committee and for express consideration to be given to informing TfL (Jones 1 at §32(d)). [CB/15/199] [CB/11/53-54] ULL has in fact been applying the policy and been making reports to TfL in accordance with this policy (Jones 2 at §16(b)). [CB/19/350]

(5) Broader cultural change

53. These practical changes have been accompanied by broader efforts to ensure that the correct values are reflected by companies throughout the Uber group. There has been a recognition that companies within the Uber-group must move from a “start-up” mentality, aggressively prioritising growth and commercial advantage above other considerations, to a more mature approach as custodians of businesses that form an important component of critical transport infrastructure on which millions of people rely. As Mr Elvidge notes, “*The attitudes, approaches and, in some cases, people, driving the business to innovate have not always been in keeping with the custodianship of a business that wants to build long-partnerships with all its stakeholders*” (Elvidge 1 at §26). [CB/14/131] Regulators must be treated as trusted partners, and their views must be

respected and taken extremely seriously.

54. Mr Khosrowshahi has set an important example in this respect, emphasising the importance of obtaining the trust and confidence of users and regulators. He chairs weekly global “all-hands” meetings at which such issues are discussed, and these meetings are broadcast to all of Uber’s locations, including to ULL’s offices (Elvidge 3 at §39). **[CB/18/330-331]**
55. ULL has also undertaken significant work to embed correct values in its business. Each of Ms Powers-Freeling, Mr Elvidge and Mr Jones recognise the important example-setting role they have to play. Furthermore ULL has (1) created a new role for a Team Engagement Programme Manager to facilitate changes to culture and values (Elvidge 3 at §40(d)); **[CB/18/331]** (2) relaunched a “Cultural Champions” policy which recognises staff nominated by peers for displaying the sort of behaviour ULL wishes to encourage (Elvidge 3 at §40(e)); **[CB/18/331]** (3) created various internal resources to elevate understanding and awareness of the expected norms (Elvidge 3 at §40(c)); **[CB/18/331]** (4) built into staff training and team strategy days a strong emphasis on exhibiting the correct values (Elvidge 3 at §40(f)); **[CB/18/331-332]** and (5) ensured that these values are recognised in how employees are rewarded and promoted.

### **The process of embedding and reviewing change**

56. ULL is not complacent about the efficacy of the changes it has made. It appreciates that the changes need to be embedded into its business, and that they must continue to be reviewed to ensure they remain appropriate and effective.
57. ULL has sought proactively to entrench these changes and supervise their operation. For example, everyone in ULL was asked to attend a mandatory training session on 23 February 2018 on regulatory obligations, new cultural norms, and current strategic priorities (Jones 1 at §64). **[CB/15/207]** Updated training was provided to leaders of various operational teams on 14 March 2018, specifically covering processes for change management (Jones 2 at §11(a)). **[CB/19/348]** ULL’s new policies and supporting documents are available on its intranet system along with simple step-by-step guides for employees (Jones 1 at §11(b)). **[CB/19/348]** Furthermore, the weekly meetings of the LOMC and Safety Steering Group provide a valuable

mechanism of oversight to ensure new policies are being applied: see Jones 2 at §11(c). [CB/19/348]

58. Moreover, on 18 April 2018 the Board resolved to implement an independent assurance procedure (“**the IAP**”) [HB/6/260] to review and validate for the Board the effectiveness of the systems, process, procedures, oversight and compliance mechanisms that ULL has put in place: see Jones 2 at §§13-15. [CB/19/349-350] The IAP consists of the provision to the Board of: (1) an initial externally verified report by 30 September 2018; (2) draft reports produced every quarter by an internal assurance team (led by the Head of Compliance) and the review of those draft reports by an external assurance team (which will be a law firm, accountancy firm or other professional services firm); and (3) a regular report by the external assurance team identifying any weaknesses and making recommendations. ULL is committed to doing everything it can to ensure its systems, processes, procedures, oversight and compliance mechanisms are as effective as they can be. The international law firm Linklaters LLP has recently been appointed as the external assurance provider (Elvidge 4 at §4(b)). [CB/21/370]

### **The issues in the appeal**

59. On 15 January 2018, ULL and TfL agreed a provisional list of issues (“**the Provisional List of Issues**”). [CB/5] This set out various of TfL’s concerns based on the content of the Decision Letter, and also indicated that TfL might raise an issue as to the lawfulness of ULL’s operating model. The GMB Union was also granted permission to adduce evidence in relation to the issue of whether ULL’s operating model risked public safety by requiring partner drivers to work unduly long hours and to work whilst tired.
60. As a result of the steps ULL has taken, the issues in the appeal have now substantially narrowed. The relevant issues are summarised in the Revised List of Issues. [CB/6] In summary, the Court is invited by ULL and TfL to consider whether, in light of the various changes ULL has made and committed to make, ULL is now a fit and proper person to hold a PHV operator’s licence. Both ULL and TfL take the view that this is a matter for the Court’s assessment in light of the new evidence before it.

61. There is no issue as between ULL and TfL concerning the lawfulness of ULL's operating model. Whilst ULL does not accept that its previous operating model was unlawful in any respect (and TfL acknowledged that there was "room for doubt" about whether ULL's model was already compliant), rather than seeking to debate the point with its regulator, ULL has sought instead to make changes to put the lawfulness of its operations beyond any doubt. Mr Elvidge explains the various changes ULL has made to its operating model in order to provide additional assurance to TfL that it is ULL (rather than drivers) who accept bookings for the purposes of the Act: see Elvidge 1 at §§206-214. [CB/14/186-187] TfL has confirmed that it is satisfied with these changes. As Ms Chapman states "*TfL considers that, following the changes, ULL's operating model complies with the legislative framework*" (Chapman 1 at §341). [CB/17/321] Furthermore, she notes "*TfL considers that ULL adopted a constructive approach to this issue: it listened to TfL and made appropriate changes (without the need for extensive dispute or litigation)*" (Chapman 1 at §342). [CB/17/321]
62. Similarly, the GMB has confirmed that it no longer wishes to participate in these proceedings to raise any public safety concerns over driver hours. This follows the voluntary introduction by ULL of a driver hours policy. As of 25 January 2018, a driver who has spent 10 hours "on trip" (i.e. when a driver is en route to collect a passenger or driving a passenger to their destination) in any rolling 24 hour period without taking a 6 hour break is automatically logged off the App and is unable to log back in for a period of 6 hours. It is intended to assuage any reasonable concern about public safety associated with the possibility of tired driving. ULL is understood to be the first operator to have introduced such a policy in London, and in circumstances where TfL has not yet sought to impose any industry-wide standards in this respect.

**D. FITNESS AND PROPRIETY: WHY THE COURT CAN BE SATISFIED THAT ULL IS A FIT AND PROPER PERSON TO BE GRANTED A PHV OPERATOR'S LICENCE**

63. ULL submits that there is now sufficient evidence available to satisfy the Court that ULL is a fit and proper person to hold a PHV operator's licence.



64. As already identified, the particular issues as to ULL's fitness and propriety in this appeal relate to ULL's relevant changes and current processes addressing:

- (1) Corporate responsibility in relation to issues having potential safety implications, particularly in the context of its previous approach to (a) reporting allegations of potentially criminal behaviour to the Metropolitan Police; (b) facilitating prospective drivers obtaining medical reports from Push Doctor between 22 August 2016 and 23 September 2016; and (c) facilitating prospective drivers obtaining enhanced criminal record checks through Onfido;
- (2) The provision of information to TfL, particularly in the context of its past approach to providing information to TfL in respect of (a) the process by which bookings were accepted under its operating model; and (b) in respect of the potential misuse of "Greyball" technology in jurisdictions outside of the United Kingdom; and
- (3) Certain further matters identified by TfL since the time of the Decision Letter [CB/3] principally in relation to other companies within the Uber group, namely (a) a breach of data security in late 2016 which affected certain of Uber's users in the United Kingdom; and (b) the use of "Ripley" software to remotely lock devices during unexpected visits by government departments in jurisdictions outside of the United Kingdom.

65. These issues are addressed in turn below and ULL explains in each case why there is now no basis for concluding, in respect of each of these issues, that ULL is not a fit and proper person for holding a PHV operator's licence.

### **Corporate responsibility in relation to issues having public safety implications**

66. Given the statutory licensing objectives, it is sensible to start with those matters in which it is said ULL's actions have or have risked jeopardising public safety.

67. In the Decision Letter, TfL took the view that ULL had "*demonstrated a lack of corporate responsibility*" in relation to a number of issues that had "*potential public safety implications*". [CB/3/2] ULL has sought to understand TfL's concerns since safety is obviously key. Although ULL considers, as explained below, that it did have regard

for public safety at the relevant time, it acknowledges that it ought to have had better internal processes for assessing impact and recording its consideration and it ought to have liaised more closely with TfL in relation to its approach to criminal allegation reporting, the proposed use of Push Doctor, and its proposed use of the services of Onfido. Had it done so, TfL's concerns could have been taken into account and different decisions may have been made. ULL has learned from this experience, and has given commitments to TfL and developed internal governance arrangements and policies to prevent any such issue arising in the future.

68. ULL wishes to emphasise to the Court that it appreciates the critical importance of ensuring public safety and always has. It would never knowingly compromise public safety. The Court can have trust and confidence that ULL does and will exhibit appropriate corporate responsibility in relation to any issues having public safety implications.
69. Indeed, in recent times ULL has taken a number of proactive steps to demonstrate its corporate responsibility in relation to issues having potential public safety implications and to ensure the greatest level of safety for passengers. By way of example:
  - (1) As already explained, ULL has developed and implemented a driver hours policy to safeguard against any risks associated with tired driving, and is understood to be the first operator in London to have done so (Elvidge 1 at §149(b)); [CB/14/168]
  - (2) ULL has developed, and is working with the Information Commissioner to implement, real-time identification checks for drivers using facial recognition technology in order to address any risk of account sharing or impersonation of drivers (§149(c)); [CB/14/168-169]
  - (3) Since February 2017, ULL has worked with Barnado's to develop online safeguarding training designed specifically for taxi and private hire drivers (§149(d)); [CB/14/169] and
  - (4) ULL has decided recently to undertake a comprehensive historical review of safety-related incidents recorded on its systems in order to identify any

weaknesses and to provide further assurance for the future (§149(e); Elvidge 4 at §15). [CB/14/169] [CB/21/372]

70. Similarly, one of the reasons why ULL has proved to be so popular with users in London is likely to be because of a number of safety advantages associated with the Uber App. As noted above, and as Mr Elvidge says in Elvidge 1 at §45 the Uber App provides passengers with driver details, vehicle model and registration numbers at the time of booking, it enables passengers to share their trip details including their live location and estimate time of arrival with friends and family, and enables ULL constantly to track the vehicle and driver throughout the journey and after it has finished, and to contact a passenger if necessary. [CB/14/135-136] This level of protection cannot easily be matched by other operators offering a traditional telephone booking service.

(1) Criminal behaviour reporting

71. The first issue identified by TfL as giving rise to a concern was the reporting of alleged criminal behaviour.

72. In summary, in the absence of any specific regulatory obligation or other guidance on point from TfL or the Metropolitan Police, ULL had developed a policy of reporting allegations of criminal behaviour to the Metropolitan Police that was reasonable in light of competing considerations (including protecting the agency of alleged victims of crime), and it made efforts to liaise with the Metropolitan Police that went beyond what it understands any other PHV operator had done. However, it did not engage with TfL on that policy, which it would have been wise to do. Once TfL's concerns about reporting became apparent to ULL, it was prompted to engage intensively with TfL and the Metropolitan Police, and ULL has now developed a policy that has been endorsed by both. ULL understands that no other PHV operator has yet developed a policy in this way.

73. The key lesson learned by ULL is that it will often be necessary and appropriate to liaise with TfL in relation to matters that go beyond strict regulatory obligations. As noted above, ULL has put in place policies and processes to ensure such liaison occurs in the future.

74. In the Decision Letter TfL criticised ULL for (1) failing to report to the Metropolitan Police certain incidents specified in their letter to TfL dated 12 April 2017 (“**the Billany Letter**”), [HB/2/70] but which was not disclosed to ULL until 28 July 2017 when TfL wrote to ULL for the first time to raise those matters with ULL, enclosing the Billany Letter; [HB/3/85] and (2) delay in providing information to TfL in response to a request made in May 2017.
75. ULL’s specific explanations for these incidents are contained in Jones 1 at §§43-44 and in Elvidge 1 at §150(a). [CB/15/203-204] [CB/14/169] ULL submits that they do not give rise to any wider or present concern. However, it has become apparent to ULL that one of the reasons why TfL raised these incidents with ULL is because ULL had not specifically informed TfL about its approach to police reporting before TfL received the Billany Letter. ULL recognises that it ought to have done so, even though it was not under any specific obligation in this respect (Jones 2 at §428). [CB/19/352]
76. Following the Decision Letter, ULL has worked extremely hard to develop a new policy for the reporting of alleged criminal behaviour to the Metropolitan Police, in collaboration with the Metropolitan Police and TfL. As a result of this work, TfL is now satisfied with the approach ULL takes to criminal reporting: “ULL’s current policy is now consistent with the approach and conduct that TfL expects of a responsible operator” (Chapman 1 at §271). [CB/17/300] Accordingly, there is no ongoing concern in respect of ULL’s approach to reporting.
77. The development of ULL’s approach to criminal reporting ought to be placed in its appropriate context. As noted above, ULL has at all times sought to adopt an appropriate approach to criminal reporting and has listened to the concerns raised by the Metropolitan Police and TfL and sought to address them:
- (1) ULL historically maintained specific structures and mechanisms for providing information to the Metropolitan Police in cases where it is appropriate. In fact, ULL understands that it is the *only* operator to have a formal arrangement with the Metropolitan Police and dedicated points of contact established in respect of police reporting (Jones 2 at §28(e)). [CB/19/353] In particular, since October 2015, ULL has employed a dedicated Law Enforcement Liaison, whose primary role has been communication with

the Metropolitan Police. ULL also developed a dedicated Law Enforcement Response Team (“LERT”) to assist the Metropolitan Police and other law enforcement agencies with investigation. In the year since August 2016, LERT handled no fewer than 1,493 requests from the Metropolitan Police. ULL has also designed and built an online Law Enforcement Response Portal, which went into effect from 31 July 2017, and enables law enforcement agencies to request information directly from LERT (Jones 1 at §38(a)-(c)). [CB/15/201] ULL has always recognised the importance of good communication with law enforcement.

- (2) ULL’s previous approach to criminal reporting is summarised in Jones 1 at §37. [CB/15/200-201] Although ULL encouraged victims and witnesses to report potential crimes to the police themselves and had teams, processes and procedures in place to help them if they chose to do so, ULL did not itself generally report allegations of criminal behaviour *to the police* other than in three situations: (a) where ULL was aware that a crime was happening that constituted an immediate risk of harm or danger; (b) where there was an ongoing offence; and (c) in instances of fraud, where ULL was the victim. This approach had a proper basis reflecting the fact that ULL would not generally be a direct witness to the relevant conduct and because police reporting raises issues of some sensitivity and complexity regarding preserving the victim’s right to privacy and allowing them to determine for themselves how they want to involve the police (Jones 1 at §37). [CB/15/200-201] ULL did, as a matter of policy, log all such allegations as complaints, in accordance with its record-keeping obligations, along with the steps it took to resolve them; and where final action was taken against a driver (deactivation of a driver account) this was reported to TfL, in accordance with its regulatory obligations.
- (3) Following the disclosure by TfL to ULL of the Billany Letter, [HB/2/70] and even before the Decision Letter had been received, ULL took steps to liaise directly with the Metropolitan Police to better understand their concerns and improve its processes where appropriate (Jones 1 at §41). [CB/15/202]

- (4) After receipt of the Decision Letter, [CB/3] and in developing a new approach to reporting, ULL has (a) consulted in further detail with the Metropolitan Police so as to address any concerns and adjust the proposed policy in light of them (Jones 1 at §§48-9); [CB/15/204-205] (b) consulted victims groups in development of its approach to reporting in order to ensure that the interests of potential victims of crime are appropriately represented (Jones 1 at §50); [CB/15/205] (c) had ongoing detailed liaison with TfL regarding the proposed policy on reporting to the Metropolitan Police (Jones 1 at §§51-58); [CB/15/205-206] (d) trained its staff on the new approach to reporting and obtained approval from the Metropolitan Police in relation to the training (Jones 1 at §53 and 60); [CB/15/205] [CB/15/206-207] and (e) sought to keep the implementation of the policy under review: in particular, Mr Jones explains how the approach to reporting has been refined to take account of preferences expressed by the Metropolitan Police that it now wished ULL to report less often (Jones 2 at §§29-35). [CB/19/353-354]
- (5) ULL's new policy on reporting is detailed in ULL's letters to the Metropolitan Police and TfL dated 8 May 2018. [HB/7/268] [HB/7/269] As those letters explain, the new policy requires the proactive reporting to the Metropolitan Police of all allegations of criminal behaviour falling within categories of offences specified by the Metropolitan Police for the purposes of reporting. There are agreed timeframes for such reporting. So far as ULL is aware, no other operator has a similar agreement with the Metropolitan Police or any other police force (Elvidge 4 at §13). [CB/21/372]

78. In this instance, ULL does not believe that its former policy on reporting of incidents to the police could, taken on its own, give rise to a fair criticism that it failed to act as a responsible operator (although it acknowledges that it could have engaged proactively with the Metropolitan Police and TfL to ensure that it had the benefit of their input). The topic of proactive reporting to the police, without victim/complainant consent, is a complex one and is unaddressed by the Act, the 1976 Act or any delegated legislation or conditions made thereunder. ULL had a proper basis for adopting the stance that it did, particularly given the absence of any guidance or rules from either the Metropolitan Police or TfL on the topic (which would be important to the legality of non-consent based processing of data).

## Push Doctor

79. For two months in 2016, ULL's "Ignition" team, which is responsible for assisting prospective drivers, suggested to drivers that they could, if they wished, use the internet-based medical service, Push Doctor, to obtain the necessary documentation to demonstrate their medical fitness to work as a PHV driver, including in particular Form TPH/204 (Elvidge 1 at §§155-6). [HB/1/3] [CB/14/171] Push Doctor connects patients via video-link with GPs registered with the General Medical Council who are licensed to practice in the UK (Elvidge 1 at §162). [CB/14/172] The objective in suggesting to drivers that they could use Push Doctor was to make it faster and cheaper for them to get the necessary medical certificate to demonstrate their medical fitness. ULL thought the Push Doctor process was at a standard that was consistent with the regulatory regime. TfL started to reject medical certificates obtained through Push Doctor and once that happened in September 2016 ULL stopped suggesting that drivers use the service and reimbursed those drivers that had used Push Doctor for the costs involved in doing so (Elvidge 1 at §168). [CB/14/176] TfL relied in the Decision Letter on the use of Push Doctor as an example of a lack of corporate responsibility in relation to an issue having potential public safety implications. While TfL had written to ULL seeking information about Push Doctor, it had not explained to ULL its specific concerns prior to taking the Decision: Elvidge 1 at §170). [CB/14/176]
80. ULL submits that it did have regard to safety and security in suggesting the services of Push Doctor (see Elvidge 1 at §173: the process by which ULL came to the decision to recommend Push Doctor is explained in Elvidge 1 at §§159-165). [CB/14/176-177] [CB/14/172-175] However, Mr Elvidge accepts that, with hindsight, the eye tests offered by the Push Doctor service may not have been adequate (Elvidge 1 at §172), and, more broadly, that the use of Push Doctor without greater advance liaison with TfL was not a good decision (Elvidge 3 at §71). [CB/18/341] He states "*I am clear that ULL should have sought TfL's views on the Push Doctor service before trialling the service*" (Elvidge 1 at §176). [CB/14/177] He also recognises "*we need to do better in having a consistent approach to assessing changes to our key processes, documenting our assessment and sign-off, and communicating with TfL*" (Elvidge 1 at §174). [CB/14/177]

81. ULL has taken specific steps to ensure that such an issue does not recur in the future. In particular, ULL has given a specific commitment to TfL that ULL will not seek to take any steps to circumvent or undermine the regulatory and licensing regime, or the regulatory arrangements TfL has put in place: see Elvidge 3 at §§70 and 72. **[CB/18/341]** The solution to these sorts of potential areas of disagreement is clearer and earlier advance consultation with TfL to prompt a dialogue in which TfL can identify and discuss any concerns it may have with ULL. Furthermore, any proposed changes to the Ignition programme will in the future be subject to the PPCM Policy and will benefit from the specific safeguards it contains. **[CB/12]** The proposed change would have to be submitted to ULL’s legal team for assessment from a regulatory compliance and risk perspective before being submitted to the LOMC or Sub-Committee for consideration (Elvidge 1 at §174). **[CB/14/177]** The LOMC and Sub-Committee would have to consider notifying TfL of the proposed change before it is implemented. Any change having a possible public safety implication would obviously be notified, and TfL’s views would be elicited.

#### Enhanced Criminal Record Checks

82. TfL requires prospective drivers to obtain an enhanced criminal record certificate from the Disclosure and Barring Service (“DBS”). Since 2011, TfL’s preferred provider for obtaining such certificates has been GB Group, although TfL did expressly accept certificates obtained by third party providers up until at least 23 January 2017 (see Chapman 1 at §208). **[CB/17/278]** Between approximately April 2016 and April 2017 ULL arranged for prospective drivers to obtain certificates through an alternative provider called Onfido, again with a view to speeding up the process of PHV driver licensing (DBS checks being a source of potential delay). In early 2017 TfL confirmed that it was investigating Onfido. ULL stopped using Onfido in April 2017 (Elvidge 1 at §§189 and 193). **[CB/14/181-182]**
83. TfL criticises ULL’s use of Onfido’s services. The main reason why it is suggested that this demonstrated a lack of corporate responsibility in relation to safety is that Onfido required ULL employees to conduct the initial check of the identification documentation of prospective drivers at the time of making applications through Onfido, and before Onfido conducted its own check. TfL considers that the involvement of ULL employees in identification checks was unacceptable, because it



demonstrated a lack of independence in the checking process. Whilst Mr Elvidge respects TfL's view, he notes that the use of employees to conduct identification checks on behalf of partner drivers was consistent with standard industry practice in relation to obtaining enhanced criminal record checks (Elvidge 1 at §§196(a)-(c)). **[CB/14/182-183]** Furthermore, ULL employees received appropriate training from Onfido in order to undertake the relevant checks (Elvidge 1 at §§196(f)-(g)) and every application was in any case subject to further checking by Onfido. **[CB/14/183]**

84. Further ULL does not accept that in promoting the use of Onfido's services it demonstrated a lack of regard for public safety such as to compromise its fitness and propriety. ULL had contacted TfL in January 2016 regarding the use of Onfido instead of GB Group: see Elvidge 1 at §198(b). **[CB/14/184]** Furthermore, the decision to promote Onfido's services was made after appropriate consideration (Elvidge 1 at §§182-9). **[CB/14/179-181]** Moreover, Onfido is a recognised and reputable provider of such services. The differences between Onfido's procedures for obtaining certificates and GB Group's procedures are explained in Elvidge 1 at §188 **[CB/14/181]**: they are not such as to demonstrate any significant deficiency in Onfido's services. Prior to the Decision, ULL also asked TfL to explain any particular concerns with the use of Onfido's services, but it did not at that stage do so: see Elvidge 1 at §§191-2. **[CB/14/182]**
85. However, Mr Elvidge nonetheless recognises that the use of Onfido without greater advance liaison with TfL was not a good decision (Elvidge 3 at §71). **[CB/18/341]** Reflecting on the incident, he has also identified areas in which ULL could and should have done better. In particular, he takes the view that "*we did not have a systematic approach to identifying and assessing the issues involved in partnering with Onfido*", "*we did not adequately document our consideration of the issue and the basis for our conclusions*" and "*we did not recognise as we should have done the value of proactively seeking TfL's feedback*" (Elvidge 1 at §198). **[CB/14/184]**
86. ULL has learned from this experience and sought to understand TfL's particular concerns with the use of Onfido. ULL has given a specific commitment to TfL that it will not seek to take any steps to circumvent or undermine the regulatory and licensing regime, or the regulatory arrangements TfL has put in place: see Elvidge 3 at §§70 and 72. **[CB/18/341]** Furthermore, ULL has redesigned its governance

processes to ensure that any such proposed decision would in the future be subject to multiple levels of internal scrutiny. TfL would have to be proactively notified, and its views elicited, before any such decision was taken (Elvidge 3 at §70). [CB/18/341]

### **Provision of information**

87. TfL also raised issues in respect of the failure of ULL to provide accurate and timely information to TfL in respect of matters of potential regulatory relevance. As explained below, ULL has accepted the substance of TfL's criticisms in this respect, and has striven to implement governance and policy changes which ensure that in the future its communications with TfL will be proactive, timely, accurate and complete.

#### (1) Correspondence on acceptance of bookings

88. In the Decision Letter, TfL alleged that ULL had provided materially false and misleading information during correspondence in 2014 concerned with ULL's process for the acceptance of bookings, and in particular the issue of whether ULL itself accepts a booking before a partner driver has confirmed he or she is willing to discharge a booking. [CB/3/2-4] TfL also alleged that ULL had provided inaccurate information to the High Court in 2015 on the same topic in the course of litigation concerned with a different issue (namely, whether ULL's partner driver vehicles were equipped with a taximeter). [CB/3/4-5]

89. ULL accepts the substance of TfL's criticism, and very much regrets that it failed to provide sufficiently accurate and helpful information to both TfL and the High Court. As Mr Elvidge confirms: *"This is a situation that I deeply regret and that I am determined to put right"* (Elvidge 1 at §65). [CB/14/142] Mr Elvidge addresses the relevant correspondence and evidence in detail in Elvidge 1 at §§67-94, including its tone. [CB/14/144-149] He concludes *"it is clear to me that some of ULL's letters to TfL were unclear, inconsistent and, on occasion, simply wrong"* (Elvidge 1 at §64) and *"In my view the relevant letters [17 March 2014 and 17 June 2014] were unclear and confusing and, on the sequencing point, either incorrect or very likely to have given a false impression"* (Elvidge 1 at §76). [CB/14/142] [CB/14/145-6] He also considers that ULL should proactively have sought to clarify and explain the discrepancies in its earlier explanations before being challenged about the same by TfL (Elvidge 1 at §85).

[CB/14/147] However, Mr Elvidge has no reason to believe that the provision of incorrect information in correspondence with TfL and in evidence to the High Court was intentional or deliberate (Elvidge 1 at §§65, 77 and 80). [CB/14/142] [CB/14/146]

90. ULL has reflected on what caused the shortcomings identified in the Decision Letter with a view to providing assurance for the future (Elvidge 1 at §97). [CB/14/150-151] It has taken a series of steps in order to ensure that its communications with TfL on issues of important regulatory concern are accurate and helpful. These include the following:

- (1) Encouraging a culture of valuing openness with regulators and seeking to move away from the culture of a “start-up” placing particular emphasis on the need to protect information concerning its proprietary technology and practices (Elvidge 1 at §98(a); [CB/14/151])
- (2) Reforming corporate governance structures so as to ensure appropriate oversight of communications with regulators. For example, the Sub-Committee has an express remit to oversee the relationship between ULL and TfL (Elvidge 1 at §98(e)); [CB/14/152]
- (3) Adopting specific policies and procedures designed to improve the accuracy and helpfulness of communication with TfL. In particular:
  - i) The new Governance Manual now sets out a specific process to be followed for responding to requests from regulators. [CB/13/84-87] This ensures that staff with sufficient subject-matter knowledge (including appropriate technical and legal knowledge) and of sufficient seniority are made responsible for addressing requests (Elvidge 1 at §98(e)); [CB/14/152]
  - ii) The PPCM Policy ensures that ULL will proactively notify TfL of proposed changes to its business practices which are likely to have regulatory relevance (Elvidge 1 at §98(d)). [CB/12/61] [CB/14/152] This will mean that TfL is provided with information at any early stage and before the relevant changes are implemented. It will be in a position to request more information and offer its views; and

(4) Committing further resources to communications with TfL. For example, ULL has established a specific regulatory relationships team led by Mr Jones (Elvidge 1 at §98(b)) into which four individuals have now been recruited (Jones 2 at §37). [CB/14/151] [CB/19/354]

91. Whilst ULL is not complacent about the efficacy of the changes it has recently made, it believes they provide sufficient reassurance that the problems experienced in the past will not be repeated (Elvidge 1 at §99). [CB/14/153] ULL desires an opportunity to demonstrate to TfL that these procedures and processes will continue to work. It is also committed to reviewing and updating its procedures as necessary in order to facilitate accurate, timely, and helpful communication with TfL.

(2) Provision of information in relation to Greyball

92. TfL also raised concerns about the failure of ULL to correspond with it in a frank and open manner in 2017 in relation to the use of Greyball technology, and the knowledge of senior officials within ULL of the potential misuse of Greyball in other jurisdictions. Greyball is software that enables the view of the App shown to particular users to be modified. Greyball has legitimate business uses and has never been misused in the United Kingdom. However, as from March 2017, there were allegations in the US media that Greyball had been misused in other jurisdictions in such a way as to interfere with the activities of regulators and law enforcement agencies. TfL thereafter corresponded with ULL about the potential misuse of Greyball, and in particular in relation to an investigation into the potential misuse of Greyball conducted by the law firm Jenner & Block. [HB/2/68]

93. ULL accepts that it failed *“to be proactive, open and transparent in its communications with TfL on matters related to greyball technology”* and that ULL can be criticised for the way in which it provided information in relation to *“the fact that senior officers within ULL had knowledge concerning the potential use of greyball technology to impede regulatory enforcement in jurisdictions outside the UK”* (Elvidge 1 at §101-2). [CB/14/154] Mr Elvidge addresses the detail of correspondence on Greyball prior to Decision Letter in Elvidge 1 at §§103-120. [CB/14/154-158]

94. Mr Elvidge and ULL’s other directors have expressed deep regret about the nature of ULL’s past communications with TfL concerning Greyball. Mr Elvidge states *“I very*

*much regret that this was the approach we took to communicating with our regulator, and am committed to healing ULL's relationship with TfL*" (Elvidge 1 at §120). [CB/14/158] Ms Chapman on behalf of TfL has noted Mr Elvidge's candid recognition that ULL did not engage with TfL as it should have done and that "[t]his gives TfL the impression that ULL recognises its past failures and wants to do more to improve its reputation with TfL and ensure it is doing the right thing" (Chapman 1 at §262). [CB/17/296]

95. In order to address these matters, as well as emphasising the importance of the correct cultural values, ULL has taken steps in three distinct areas. First, ULL has sought to improve its procedures for communicating with TfL. Some of the relevant measures that have been implemented are described above at §90. Following the Decision Letter, there has been further communication between ULL and TfL in relation to Greyball in order to address TfL's outstanding concerns. Communications with TfL have improved. ULL has provided full and frank responses to TfL's questions. It has also disclosed underlying primary materials, such as emails, evidencing the extent of knowledge of former officials within ULL of the potential misuse of Greyball in other jurisdictions (Elvidge 1 at §§121-2). [CB/14/158-159] [HB/3/133; 138] [HB/4/142; 159; 164]
96. Second, ULL and the wider Uber business has sought to eliminate any specific risk of the misuse of Greyball.
- (1) On 7 April 2017, soon after allegations in relation to the potential misuse of Greyball emerged, Uber implemented a new corporate policy prohibiting the use of account tags to change vehicle views, and other similar technological techniques intended to thwart or interfere with official enforcement action. [HB/2/69] In order to assist in the enforcement of this policy, Uber modified its systems to require employees seeking to apply such tags to obtain pre-approval by a manager and legal clearance. Violation of the policy would lead to disciplinary sanction (Elvidge 1 at §127(a)). [CB/14/161]
- (2) To show how serious it is about this issue and despite the legitimate uses to which it was put, the Uber business is decommissioning the Greyball function entirely: *"Uber globally has taken steps to decommission the Greyball function altogether. It has already turned off the function and is now in the process of removing historic Greyball tags"* (Elvidge 3 at §65). [CB/14/142]

- (3) Greyball was never misused in the United Kingdom. Two former directors of ULL had knowledge of the potential misuse of Greyball in other jurisdictions, but no longer have any role in relation to ULL (Elvidge 1 at §127(b) [CB/14/162]) or have left Uber entirely (Elvidge 1 at §§54; 58; 119, 127(b)). [CB/14/138; 139; 158; 162]]. None of ULL's current Board had any involvement in or knowledge of the potential misuse of Greyball in other jurisdictions.

97. Third, ULL has taken steps to protect its independence and integrity so as to ensure that good and autonomous decisions will be made in the future in relation to ULL's role as a PHV operator.

- (1) The recent corporate governance reforms and appointment of a new Chair and non-executive directors mean that ULL's business now benefits from much stronger internal oversight and supervision. The Board of ULL, given its composition, can be trusted to behave in a fit and proper manner.
- (2) ULL has also taken steps to ensure that it is not adversely affected by the activities of other companies within the Uber group. The introduction of the Compliance Protocol ensures that ULL's autonomy vis-à-vis other companies in the Uber group is recognised and respected and that ULL's Board is empowered to raise any concerns independently with TfL, including by ensuring that it has available to it the information needed to do so (Elvidge 1 at §124). [CB/10] [CB/14/160]
- (3) In addition, ULL has taken a series of practical steps to ensure that its staff demonstrate the right type of behaviour and feel encouraged to report any concerns. In particular: (a) ULL has adapted performance management systems to emphasise teamwork and collaboration rather than individual outcomes (Elvidge 1 at §125); [CB/14/160] (b) ULL has re-trained managers (Elvidge 1 at §125); [CB/14/160] (c) Uber has introduced a global whistleblowing policy, which is broad enough to encourage Uber staff in all jurisdictions to report instances of inaccurate information being provided to a regulator (Elvidge 1 at §126(a)); [CB/14/161] and (d) Uber has introduced a global "Integrity Helpline" run by a professional third party which provides

a secure and confidential means of raising concerns about business practices (Elvidge 1 at §126(b)). [CB/14/161]

### **Subsequently raised issues**

98. TfL has also identified two further issues for the Court to consider, based on information obtained after the Decision was taken. These are addressed below.

#### **(1) Data breach**

99. TfL invites the Court to consider whether a breach of data security in late 2016 in relation to the Uber group, prior to the various changes ULL has implemented, provides evidence that ULL is not now a fit and proper person to be a PHV Operator. ULL submits that the breach of data security and the immediate and inappropriate response of officers within UTI to that data breach do not provide such evidence in relation to ULL's current fitness and propriety. Similarly, ULL submits that whilst ULL's subsequent communications with TfL concerning the data breach demonstrate the real value of the changes ULL has made to its business, and in particular the importance of the Compliance Protocol, they do not provide evidence to question ULL's current fitness and propriety.

100. The circumstances concerning the data breach are explained in Elvidge 1 at §§130-1. [CB/14/163-164] In summary, hackers accessed archived information stored by Uber group companies on a third party cloud storage service (and not on ULL's own systems) which included some customer information, including in relation to users in the United Kingdom. Most regrettably, following the unauthorised access, rather than disclose the breach immediately to appropriate regulators, two officers within UTI simply made a secret payment to the hackers in order to prevent further dissemination of the information.

101. It is important to note that the data breach and the response to it did not involve any past or current ULL personnel, and that ULL was unaware that the data breach had taken place or what the response to it had been until November 2017 (Elvidge 1 at §137). [CB/14/165] Further, UTI, under its new leadership, has condemned the approach taken by its officers in response to the data breach and those responsible have had their employment terminated (Elvidge 1 at §131(f)), [CB/14/164] the data

breach has been thoroughly investigated, and a report in relation to the breach has been made by UBV to the Dutch DPA in accordance with applicable data protection law. The Uber group more widely has taken concerted steps to improve data security. UTI has improved its security systems by strengthening the authentication and access processes (Elvidge 1 at §132(b)), [CB/14/164] by transferring almost all access codes to internal systems, significantly reducing the need to use external private repository systems (Elvidge 1 at §132(c)), [CB/14/164] and by hiring Mr Matt Olsen, a former general counsel of the US National Security Agency and director of the US National Counterterrorism Centre, to structure its security team and guide new data security processes (Elvidge 1 at §133). [CB/14/164]

102. Once ULL became aware of the data breach in November 2017, it sought to provide TfL with information about it. Mr Elvidge explains ULL's response in Elvidge 1 at §§140-146. [CB/14/165-166] In summary, although there was a delay in the provision of complete information by UTI to ULL in relation to the data breach which impeded ULL's ability to communicate quickly with TfL (Elvidge 1 at §§142-3 and 146), [CB/14/166] ULL did act appropriately in liaising with its regulator once it was equipped with relevant information. ULL also sought proactively to engage with the Information Commissioner's Office in the United Kingdom once it became aware of the breach (Elvidge 1 at §144). [CB/14/166] It also took steps to provide reassurance to users in the United Kingdom, including producing a number of updates for App users and offering guidance on the steps that should be taken (Elvidge 1 at §145). [CB/14/166]
103. Mr Elvidge recognises that *"ULL's limited visibility of, and involvement in, the global handling of the issue hampered in particular our ability to communicate with TfL and the affected passengers and drivers"* (Elvidge 1 at §138). [CB/14/165] ULL has taken specific steps to address that identified weakness in its relations with other companies within the Uber group. In particular, the development of the Compliance Protocol is intended to ensure that ULL is provided with timely information in relation to matters which it may need to report to TfL (including data breaches that affect users in the United Kingdom) (Elvidge 1 at §147). [CB/14/166-167] The Compliance Protocol was developed at the particular initiative of Ms Powers-Freeling who explains how *"the experience [of the data breach] reaffirmed my view that these sorts of issues could only reliably and consistently be addressed properly with robust, agreed*



*mechanisms in place covering communication and engagement between ULL and the Uber group” (Powers-Freeling 1 at §23)). [CB/16/216]*

104. Similarly, Mr Elvidge insisted on the Compliance Protocol being adopted after the experience of the data breach (Elvidge 3 at §17). [CB/18/327] In order to ensure that the Compliance Protocol is operated properly Ms Powers-Freeling has also discussed it personally with the UTI CEO, Mr Khosrowshahi, and ULL is taking various steps to test it, including planning and undertaking “dummy runs” under the protocol (Powers-Freeling 2 at §16; Elvidge 4 at §§5-7). [CB/20/364] [CB/21/370-371]. Mr Elvidge and ULL’s non-executive directors have recently travelled to San Francisco and used this opportunity to discuss the Compliance Protocol, its operation and embedding it in the way Uber works with senior UTI personnel (Elvidge 4 at §7). [CB/21/371] ULL is absolutely committed to ensuring that these types of problems do not recur.

(2) Ripley

105. Ripley is a software tool that can be used remotely to lock a computer or laptop (but not to interfere with its contents). This is a standard type of tool often used as a means of dealing with lost or stolen laptops, and to prevent the destruction of data contained on devices (Elvidge 1 at §21). [CB/14/130] TfL raises the issue of whether allegations that between 2015 and 2016 companies within the Uber group used Ripley remotely to lock devices during unexpected visits by government departments in jurisdictions outside the United Kingdom undermines ULL’s current fitness and propriety. TfL also complains that it was not given sufficient information about Ripley in advance of information being reported in the media. ULL submits that the complaints raised concerning Ripley do not give reason to undermine its current fitness and propriety.
106. Ripley has never been used by ULL in respect of enforcement activity in the UK (Elvidge 3 at §23). [CB/18/328] The alleged use of Ripley by other Uber companies in other jurisdictions ought to be understood in context: the tool only locks devices, and does not destroy data stored on them. Furthermore, at all times since at least March 2016, Uber’s group-wide policies regarding regulatory investigations have explicitly required cooperation with regulatory enforcement activity (Elvidge 3 at §26). [CB/18/328-329] The destruction of data in response to regulatory investigations is

something that has been and is expressly prohibited by Uber's group-wide policies. Furthermore, as to TfL's complaints about the timing of ULL's communications on Ripley, once ULL became aware of information concerning the potential use of Ripley in response to regulatory enforcement activity, it communicated that information to TfL and sought to assuage its concerns: see Elvidge 3 at §§22, 24-5 and 27. [CB/18/328-329] It acted in a fit and proper manner in doing so.

107. There can be no question that Ripley or any similar tool would ever be used in the United Kingdom in such a way as to prevent or impede TfL in its enforcement activities: this sort of action would never be sanctioned by ULL's leadership. Moreover, as ULL's new processes under the Compliance Protocol and for proactive notification become embedded, the provision of information by ULL to TfL in the future in relation to those matters that are properly considered to be matters of potential regulatory concern shall become more efficient.

### **Summary**

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

### **E. TERM AND CONDITIONS OF A PHV OPERATOR LICENCE**

109. Mr Elvidge acknowledges that the term and conditions of any PHV operator's licence "*should reflect the fact that we are still rebuilding a relationship of trust with our regulator – a relationship that we damaged by the mistakes we made*" (Elvidge 3 at §75). [CB/18/341-342]
110. ULL only seeks a licence term of 18 months. Such a period would provide time for changes ULL has made to its business to be fully embedded and put to the test (see

Elvidge 3 at §78). [CB/18/343] It would allow ULL an opportunity to rebuild trust with TfL.

111. ULL and TfL are currently seeking to agree proposed conditions to be attached to ULL's PHV operator's licence, if this appeal is to be allowed. A list of agreed and non-agreed conditions is due to be filed with the Court on 14 June 2018, and ULL will make further brief written submissions on any disputed issues by 20 June 2018.

## **F. CONCLUSION**

112. For the reasons given above, ULL invites the Court to allow its appeal and to grant it a PHV operator's licence for such term and subject to such conditions as the Court thinks fit.

**TOM DE LA MARE Q.C.**

**RANJIT BHOSE Q.C.**

**HANIF MUSSA**

**11 June 2018**

## ANNEX A - THE RELEVANT LEGAL FRAMEWORK

### Overview of the Statutory Scheme

1. The Act governs the licensing and regulation of private hire operators, vehicles and drivers in London. Upon the establishment of TfL by the Greater London Authority Act 1999, it became the licensing authority under the Act. [AB/6]
2. Prior to the passing and implementation of the Act, private hire in London was entirely unregulated. This was in contrast to the position in the remainder of England and Wales, where regulation under Part II Local Government (Miscellaneous Provisions) Act 1976 (“the 1976 Act”) applied, and continues to apply [AB/2] (save for Plymouth which has its own legislation). The underlying purpose of Part II of the 1976 Act was described by Russell LJ as being “... to provide protection to members of the public who wish to be conveyed as passengers in a motor car provided by a private hire organisation with a driver”: *St. Albans DC v Taylor* [1991] RTR 400, at 403A-B. It provides for a “triple licensing” requirement under which the operator, vehicle and driver must all be licensed by the same authority. [AB/21/357]
3. It was to “close the final loophole” represented by the absence of private hire licensing in London that the Act was brought forward as a Private Member’s Bill by the former Secretary of State for Transport, Sir George Young. The Bill enjoyed government and all party support. When presenting the Bill for its second reading in the House of Commons, Sir George emphasised the importance of enhancing confidence in the safety and integrity of the private hire sector, saying:

*“As part of a broader strategy of promoting public transport and enhancing confidence in its safety and integrity, we need to close the final loophole by licensing London’s minicabs, which are the remaining component of public transport.”* (23 January 1998, column 1257)
4. When introducing the Bill for its second reading in the House of Lords, Baroness Gardner similarly emphasised that the objective was one of “public safety” (18 July 1998, columns 542-543):

*“I know that my concern is shared by many noble Lords who believe that the complete absence of regulation in the London minicab trade is a serious anomaly which should be*

*remedied as a matter of public safety. The Bill seeks to provide such a remedy.*

...

*... Legislation as a simple matter of public safety is long overdue. At last this Bill gives us a chance to put things right."*

5. The Act is modelled on, but is not identical to, the 1976 Act. It contains the same triple licensing requirement under which all three licences must be issued by TfL. As to its structure, s.1 contains central definitions whilst ss.15-29 contain general licensing provisions. Sections 2-5 are concerned with the London PHV operator's licence ("**PHV operator's licence**"), ss.6-11 with the London PHV licence ("**vehicle licence**") and ss.12-14 with the London PHV driver's licence ("**driver's licence**"). [AB/5/140-141] [AB/5/155-166] [AB/5/141-145] [AB/5/146-149] [AB/5/150-154]
6. In addition, in exercise of powers conferred by sections within the Act, the Secretary of State for Transport has made the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000 ("**the Regulations**"). The Regulations make further provision in relation to the making of applications for, and grant of, a PHV operator's licence. This includes the making of conditions to which each PHV operator's licence is subject: s.3(4) and regulation 9. [AB/7] [AB/5/142; AB/7/204-205]
7. By virtue of s.32 of the Act, save for exceptions not here relevant, both the regulation-making power and also the "prescribing" power under the Act rest with TfL itself. This means that TfL, as regulator, is in a position to raise standards and impose conditions from time to time as it thinks necessary, which are applicable to all operators in London. It has exercised its powers on a number of occasions to amend the Regulations. [AB/5/168-169]

### **Applications for a PHV Operator's Licence**

8. Section 2(1) provides that "*No person shall in London make provision for the invitation or acceptance of, or accept, private hire bookings unless he is the holder of a private hire vehicle operator's licence for London ...*" Non-compliance with s.2(1) is a criminal offence: s.2(2). [AB/5/141]
9. An "operator" is defined as a person who "*makes provision for the invitation or acceptance of, or who accepts, private hire bookings*": s.1(1)(b). Its operating centre [AB/5/140]

consists of those “premises at which private hire bookings are accepted by an operator”:  
s.1(5).<sup>3</sup> An applicant is required to give the address for those premises to TfL in its application for a licence: s.3(2). [AB/5/141] [AB/5/142]

10. Section 3 is concerned with the application for, and grant of, a PHV operator’s licence. Omitting references to matters concerned with immigration status, s.3 provides as follows: [AB/5/142]

*“3. London operator's licences.*

*(1) Any person may apply to the licensing authority for a London PHV operator's licence.*

*(2) An application under this section shall state the address of any premises in London which the applicant proposes to use as an operating centre.*

*(3) The licensing authority shall grant a London PHV operator's licence to the applicant if the authority is satisfied that –*

*(a) the applicant is a fit and proper person to hold a London PHV operator's licence;*

*...*

*(b) any further requirements that may be prescribed (which may include requirements relating to operating centres) are met.*

*...*

*(4) A London PHV operator's licence shall be granted subject to such conditions as may be prescribed and such other conditions as the licensing authority may think fit.*

*(5) ... a London PHV operator's licence shall be granted for five years or such shorter period as the licensing authority may consider appropriate in the circumstances of the case.*

*(6) A London PHV operator's licence shall –*

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<sup>3</sup> There is no equivalent requirement for an operating centre under the 1976 Act (and, indeed, the 1976 Act does not impose distinct restriction on the acceptance of bookings as opposed to the making of provision for the invitation or acceptance of bookings).

*(a) specify the address of any premises in London which the holder of the licence may use as an operating centre;*

*(b) be in such form and contain such particulars as the licensing authority may think fit.*

*(7) An applicant for a London PHV operator's licence may appeal to a magistrates' court against –*

*(a) a decision not to grant such a licence;*

*(b) a decision not to specify an address proposed in the application as an operating centre; or*

*(c) any condition (other than a prescribed condition) to which the licence is subject."*

11. Section 15 makes additional provision for the application for licences under the Act, including for PHV operator's licences. Subsection (3) provides that the information which an applicant for such a licence may be required to furnish "*in particular*" includes information about: any convictions recorded against him; any business activities he has carried on before making the application; if the applicant is or has been a director or secretary of a company, that company; if the applicant is a company, information about its directors or secretary; and if the applicant proposes to act as an operator in partnership with any other person, information about that person. The fact that corporate applicants which are companies may be required to furnish information about their directors is of relevance to ascertaining how the test of fitness and propriety applies towards companies (see, further, below). [AB/5/155]
12. Where an application is duly made and considered under s.3, and TfL is satisfied that the applicant is both (a) a fit and proper person to hold such a licence and (b) meets any other prescribed requirements, it is bound to ("*shall*") grant a PHV operator's licence; there is no residual discretion for TfL nonetheless to refuse the application.
13. Where TfL refuses an application, TfL is required to give grounds for the refusal: regulation 5(2). Section 3(7)(a) gives a statutory right of appeal to the magistrates' court against such a refusal, noting that the provisions of the Act apply as much to a [AB/7/201]  
[AB/5/142]

renewal of a licence as they apply to its initial grant: s.15(5)).

[AB/5/155]

### The PHV Operator's Licence

14. Where TfL grants a PHV operator's licence, the licence (a) must be granted subject to such conditions as may have been prescribed (s.3(4)), (b) may be granted subject to such other conditions as TfL "*may think fit*" (*ibid*), and (c) must be for a period of five years or such shorter period as TfL may consider appropriate in the circumstances (s.3(5)). [AB/5/142] [AB/5/142]
15. An operator owes a range of duties, both under the Act and the Regulations, and by virtue of the grant of a licence subject to conditions prescribed under the Regulations (and, in particular, regulation 9). Although TfL did not allege a breach of any of these distinct obligations, the purpose of summarising these obligations is two-fold. First, it serves again to demonstrate that the primary objective of the licensing of PHV operators under the Act is one of public safety. Second, it focuses attention on what is legally required of the holder of a PHV operator's licence, which is clearly relevant to the assessment of an operator's fitness and propriety. [AB/7/204-205]
16. The operator's main obligations are as follows:
  - (1) It must not in London accept a private hire booking other than at its operating centre: s.4(1). [AB/5/144]
  - (2) It must secure that any vehicle and driver provided by it for carrying out a private hire booking accepted by it in London are each currently licensed by TfL: s.4(2). [AB/5/144]
  - (3) It must keep, at its operating centre, a record in the prescribed form of the private hire bookings accepted by it (s.4(3)(b)), and must, before the start of each journey so booked, enter in that record the prescribed particulars of the booking (s.4(3)(c)). Regulations 10-11 prescribe the form and detailed particulars, respectively. [AB/5/144] [AB/7/205-206]
  - (4) It must keep, at its operating centre, records of such particulars of the vehicles and drivers which are available to it for carrying out the bookings so accepted as may be prescribed: s.4(3)(d). [AB/5/144]



- i) Regulation 12 prescribes the vehicle particulars to be recorded, [AB/7/206-207] including make, model, colour, registration number and registered keeper, together with copies of the current MOT certificate and insurance certificate.
  - i) Regulation 13 prescribes the driver particulars to be recorded, [AB/7/207] including name, date of birth, national insurance number, copy of driving licence and photograph of the driver.
- (5) It must produce each of these records for inspection by the police or TfL's authorised officers: s.4(3)(e). [AB/5/144]
  - (6) It must maintain and establish a procedure for dealing with complaints arising in connection with any private hire booking accepted by it: regulation 9(7)(a). In addition, it must keep, at its operating centre, a record of complaints made, both in respect of private hire bookings accepted by it, but also of any other complaint made in respect of its undertaking as an operator: regulation 14. This also particularises the contents of that record, in summary including the name of the driver and complainant, the nature of the complaint, details of the investigation, and subsequent action taken as a result. [AB/7/205] [AB/7/207-208]
  - (7) It must maintain and establish a procedure for dealing with lost property arising in connection with any private hire booking accepted by it: regulation 9(7)(b). In addition, it must keep at its operating centre a record of lost property, including any found in a vehicle used to carry out a booking accepted by it: regulation 15. The particulars to be recorded include evidence to show, where practical, that an attempt was made to return the item to the owner, and if this was successful. [AB/7/205] [AB/7/208]
  - (8) It must notify TfL of convictions within 14 days: regulation 9(4). Where the operator is a company, this means convictions against "*that body or group or any officer of that body or group*": regulation 9(4)(a)(iii). [AB/7/204]
  - (9) It must notify TfL within 14 days where any information provided in its application for a licence has changed, along with details of the change:

regulation 9(4)(b). [AB/7/204]

(10) It must notify TfL within 14 days where any driver ceases to be available to it for carrying out bookings, by virtue of their unsatisfactory conduct in connection with their driving of a private hire vehicle (providing their name and the circumstances of the case): regulation 9(4)(c). [AB/7/204]

(11) It must notify TfL of any material changes to its operating model that may affect its compliance with the Act, the Regulations or any of the conditions of its licence, before those changes are made: regulation 9(13). [AB/11A/234A]

17. Finally, and further emphasising the primacy of public safety, where TfL decides to suspend or revoke an extant PHV operator's licence under s.16(2) , and its opinion is that "... *the interests of public safety require the suspension or revocation to have immediate effect ...*", the suspension or revocation does take effect immediately and not after the usual 21 day period: s.17(2). In these circumstances, although the operator may appeal to the magistrates' court, there is no stay on the effect of this decision pending conclusion of the appeal: s.26(2). This is quite different from the position in respect of an ordinary non-renewal of a licence. In such cases, the decision not to renew is stayed pursuant to s.26 pending an appeal. The operator can continue to conduct its regulated business. [AB/5/156] [AB/5/144] [AB/5/157-158] [AB/5/165]

### **The Court's approach to this Appeal**

18. Section 25(3) of the Act provides that an appeal is to be by way of complaint for an Order and that the Magistrates' Courts Act 1980 applies. Subsection (6) provides that where on appeal this Court "... *varies or reverses any decision of the licensing authority ... the order of the court shall be given effect to by the licensing authority ...*" [AB/5/164]

19. As a statutory appeal to the magistrates' court against a decision of a licensing authority, the appeal operates as a complete rehearing of ULL's application for renewal of its PHV operator's licence. The Court is required to take account of all the evidence available as at June 2018. Strict rules of evidence do not apply. As was confirmed by Bingham LJ in *McCool v Rushcliffe BC* [1998] 3 All ER 889 (an appeal by way of case stated under the 1976 Act about the fitness and propriety of a driver):

"15 ... in reaching their respective decisions, the Borough Council and the [AB/25/382]

justices were entitled to rely on any evidential material which might reasonably and properly influence the making of a responsible judgment in good faith on the question in issue. Some evidence such as gossip, speculation and unsubstantiated innuendo would be rightly disregarded. Other evidence, even if hearsay, might by its source, nature and inherent probability carry a greater degree of credibility. All would depend on the particular facts and circumstances.”

20. The question for the Court is whether, taking the Decision into account, it is satisfied that the Decision is “wrong” on the basis of all the evidence now before it: R (Hope and Glory Public House Limited) v Westminster Magistrates’ Court [2011] EWCA Civ 31 at [34, 39, 45-46] (“Hope and Glory”). That case concerned an appeal under the Licensing Act 2003, and provides guidance on the proper approach to be taken on an appeal from a decision of the licensing authority, including what weight is to be accorded to that decision by the appeal court. At first instance, Burton J drew from established practice and authority under earlier licensing statutes, in particular the classic statement of Lord Goddard CJ in Stepney Borough Council v Joffe [1949] 1 KB 599 at 602, as applied by Edmund Davies LJ in Sagnata Investments Ltd v Norwich Corpn [1971] 2 QB 614. [AB/28/413, 415, 416] [AB/17/284] [AB/19/310]
21. Burton J said as follows:
- “43. I conclude that the words of Lord Goddard CJ approved by Edmund Davies LJ are very carefully chosen. What the appellate court will have to do is to be satisfied that the judgment below ‘*is wrong*’, that is to reach its conclusion on the basis of the evidence put before it and then to conclude that the judgment below *is wrong*, even if it *was not wrong* at the time. That is what this district judge was prepared to do by allowing fresh evidence in, on both sides. [AB/28/413]
- “44. The onus still remains on the claimant, hence the correct decision that the claimant should start, one that cannot be challenged as I have indicated.
- “45. At the end of the day, the decision before the district judge is whether the decision of the licensing committee is wrong. Mr Glen has submitted that the word ‘wrong’ is difficult to understand, or, at any rate, insufficiently clarified. What does it mean? It is plainly not ‘Wednesbury unreasonable’ [Associated

*Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223] because this is not a question of judicial review. It means that the task of the district judge having heard the evidence which is now before him, and specifically addressing the decision of the court below is to give a decision whether, because he disagrees with the decision below in the light of the evidence before him, it is therefore wrong.” (original emphasis.)

22. The Court of Appeal endorsed Burton J’s approach, at [46]. Having confirmed that the decision of the licensing authority was a relevant matter for the appeal court to take into consideration, it went on to recognise that the question of its weight could only be answered in “*very general terms*” in the light of “*all the variables*” [45]. It continued:

“It is right in all cases that the magistrates’ court should pay careful attention to the reasons given by the licensing authority for arriving at the decision under appeal, bearing in mind that Parliament has chosen to place responsibility for making such decisions on local authorities. The weight which magistrates should ultimately attach to those reasons must be a matter for their judgment in all the circumstances, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on the appeal.”

23. In the instant case, the Decision was closely reasoned. However, it was reached more than 9 months ago and without TfL having the benefit of the full and detailed evidence that is now before this Court, including in relation to all of the changes that have been made since the time of the Decision, as highlighted elsewhere in these submissions. These changes do address TfL’s expressed concerns. In these circumstances, ULL will contend that the Court should focus on a present-day assessment of ULL’s fitness and propriety.

### **Fitness and Propriety**

24. The expression “fit and proper” appears in many licensing and regulatory contexts. In *R (RBNB) v Crown Court at Warrington* [2002] 1 WLR 1954 Lord Bingham (with whom the other members of the committee agreed) said this about the expression:

“9 ... This is a portmanteau expression, widely used in many contexts. It

does not lend itself to semantic exegesis or paraphrase and takes its colour from the context in which it is used. It is an expression directed to ensuring that an applicant for permission to do something has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do. In a case such as the present an applicant for a justice's licence under the 1964 Act seeks permission to run a public house. Thus, before granting a licence, justices (or the Crown Court on appeal) must think the applicant has the personal qualities and professional qualifications reasonably required of a person seeking to run the particular public house for which he or she seeks a licence. The judgment must be made not only in relation to the particular applicant but also in relation to the particular premises. But the focus is on the particular applicant's suitability to run the particular public house." (emphasis added)

25. In *RBNB* an unlimited company had sought to transfer a public house justices' on-licence to a manager whom it employed, but had declined to reveal its shareholders to the justices who refused to transfer the licence on the basis that it was impossible to be satisfied as to the fitness or propriety of the licensee. Newman J allowed an appeal by the company, with the Court of Appeal and House of Lords agreeing. Lord Bingham went on to hold that the factual findings:

"17. ... made it plain that [the manager] was, personally and professionally, a fit and proper person. In other words, he could be relied on to run the licensed premises in a competent and law abiding manner, in accordance with the conditions of any licence granted." [AB/26/396]

26. This second sentence was described by Mitting J as "*the heart of the test to be applied*" in *Chief Constable of Leicestershire v Tatam* [2005] EWHC 912 (Admin) at [9], an appeal by way of case stated against the justices' decision that the applicant was not fit and proper for the purposes of a justices on-licence. [AB/27/400]
27. In the instant case, the Court has to assess whether it is satisfied that ULL is a fit and proper person to hold a PHV operator's licence under the Act. As set out in the body of this skeleton argument, includes assessing whether ULL can be trusted to run the business of a licensed operator in a competent and law abiding manner, in

accordance with its regulatory obligations and the conditions of any licence granted. It includes an assessment of whether ULL is suitably honest and trustworthy and can be relied upon to provide the service of operator for the benefit of the public.

28. The following points are relevant to this assessment. First, the Court must approach the assessment bearing in mind the objectives of the particular licensing regime in question. In *McCool*, Lord Bingham approached the assessment of the driver's fitness under the 1976 Act as follows:

"7. One must, as it seems to me, approach this case bearing in mind the objectives of this licensing regime which is plainly intended, among other things, to ensure so far as possible that those licensed to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest, and not persons who would take advantage of their employment to abuse or assault passengers." [AB/25/380]

See, also [23] where the importance of "*bear[ing] in mind the regulatory framework*" was reiterated. [AB/25/384]

29. Second, within that context, the assessment of fitness and propriety entitles the Court to have regard to a wide range of factors. In *McCool*, Bingham LJ said, at [23], that the Court may conclude that it is not satisfied of fitness and propriety for any "*good reason*". Although what is a good reason will necessarily vary from case to case and according to context, he offered the following guidance: [AB/25/384]

"23. ... it is appropriate for the local authority or justices to regard as a good reason 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...."

30. Third, where the applicant for an operator's licence is a company, the Court is entitled to look beyond its legal personality, inquire into who in fact controls it and is responsible for the running of its licensed business, and consider whether that inquiry reveals any facts that would render the applicant company unfit. This is consistent both with authority (see *R v Knightsbridge Crown Court ex p. International*



## ANNEX B - SIGNIFICANT MEASURES RELEVANT TO FITNESS AND PROPRIETY

### UBER: GOVERNANCE, PERSONNEL AND CULTURE

1. Dara Khosrowshahi was appointed the new Global CEO of Uber in September 2017 to replace Travis Kalanick, who stepped down in June 2017. Mr Khosrowshahi, who was previously CEO of Expedia, has already made a number of enhancements to UTI's governance structures [Elvidge 1 at §27]. [CB/14/132] These include expanding the UTI Board from 11 to 17 directors, introducing an independent chair, and appointing three new independent directors. [Culture and Governance submission to TfL]. [HB/4/189/1819] [HB/5/206/1945]
2. Tony West took up his role as Uber's Chief Legal Officer in November 2017. Previously, he was Executive Vice President of Government Affairs, General Counsel and Corporate Secretary at PepsiCo as well as a former federal prosecutor and Associate Attorney General in the Obama administration. [Culture and Governance submission to TfL]. [HB/4/189/1820] [HB/5/206/1946]
3. Mr Khosrowshahi has been clear from the outset that he plans to change Uber's culture and governance [Jones 1 at §11]. [CB/15/193] One of Mr Khosrowshahi's first steps in tackling Uber's culture was to introduce new global cultural norms. They include "we do the right thing", "we are customer obsessed", and "we build globally, we live locally" [Elvidge 1 at §125]. [CB/14/160] Mr Khosrowshahi's continued support for the global cultural norms is clear from his email of 2 February 2018, as well as the frequent references to them in global "all-hands" meetings [Elvidge 3 at §38-39]. [CB/18/330-331]
4. Uber has introduced a number of global resources to help to embed the new cultural norms throughout the organisation. These include screen-savers and public-facing signatures [Elvidge 3 at §40]. [CB/18/331-332]

### UBER: POLICIES

5. In April 2017, Uber implemented a new corporate policy prohibiting the use of account tags to change vehicle views, as had been the case with the greyball tool, as well as other similar technological techniques intended to thwart or interfere with enforcement action [Elvidge 1 at §127]. [CB/14/161-162]



6. Uber's Global Whistleblowing Policy is intended to encourage employees from across the global business to raise concerns about the way in which things are done [Elvidge 1 at §126]. **[CB/14/161]**
7. Uber's "integrity helpline" allows employees to raise concerns with someone other than their manager or colleagues [Elvidge 1 at §126]. **[CB/14/161]**

#### **INTRA-GROUP RELATIONSHIPS**

8. ULL and UTI have agreed on a number of principles covering ULL's relationship with other companies in the Uber group, and UTI in particular. These include express recognition by UTI of the significance of ULL's status as a licensed PHV operator, the duty of the ULL Board to act in the best interests of ULL and to meet its regulatory obligations and report any concerns to regulators, and a commitment from UTI that it will communicate to ULL any material events that affect ULL in a timely manner [Jones 1 at §26]. **[CB/15/196-197]**
9. UTI, ULL and UBV also endorsed a Compliance Protocol in February 2018, which builds on the principles, and which was championed by Ms Powers-Freeling, based on her extensive experience of working for global businesses operating in regulated industries [Powers-Freeling 1 at §24]. **[CB/16/216]**
10. UTI, ULL and UBV have performed valuable "dummy run" exercises to test the effectiveness and understanding of the Compliance Protocol, which Mr Elvidge found extremely useful and reassuring [Elvidge 4 at §4-5]. **[CB/21/370]**
11. The Compliance Protocol is supported in practice by the Compliance Working Group, which meets monthly, and the Compliance Steering Group, which meets quarterly [Elvidge 3 at §32]. **[CB/18/329]**

#### **ULL'S BOARD**

12. On 4 August 2017, ULL wrote to TfL about proposed changes that ULL was going to make to its corporate governance arrangements. The letter committed, among other things:
  - (a) to establish a sub-committee of the board with responsibility for overseeing ULL's licensed activities,

- (b) to inclusion in ULL's constitutional documents of a specific reference to the importance of ULL maintaining its PHV operator's licence; and
  - (c) to engage an external auditor to review the appropriateness of ULL's policies, authorities and processes and corporate governance best practices. [Jones 1 at §14]. [CB/15/193-194]
13. Tom Elvidge and Fred Jones were appointed directors of ULL in August 2017. Tom Elvidge assumed managerial responsibility for ULL's licensed activities, as General Manager and nominated representative under the PHV operator licence, [Elvidge 1 at §4 and §56], [CB/14/126; 139] taking over this role from Jo Bertram, who subsequently left the business [Elvidge 1 at §58]. [CB/14/139]
  14. ULL changed its Articles of Association in October 2017 to include a specific reference to the responsibility of the Board, and each director, for maintaining the PHV operator's licence, and to create a sub-committee of the Board with primary responsibility for licensed activities. The Articles require that the sub-committee is chaired by the NED who chairs the Board [Jones 1 at §20-22]. [CB/15/195]
  15. Laurel Powers-Freeling was appointed as a NED and Chair of the Board in November 2017 [Jones 1 at §24]. [CB/15/196] Ms Powers-Freeling was joined by Roger Parry and Susan Hooper in April 2018 [Powers-Freeling 2 at §3]. [CB/20/361]

#### **ULL: GOVERNANCE**

16. Deloitte was appointed to review ULL's policies, authorities, processes and corporate governance. The process was led by Mr Jones, who was clear from the outset that Deloitte's work should help ULL to embed an understanding of ULL's business, operations and regulatory regime within ULL [Jones 1 at §30]. [CB/15/197]
17. Following the Deloitte review, ULL produced a "Governance and Policy Framework Manual", which set out all of ULL's policies, processes, governance and assurance activities in one place. [Jones 1 at §32(a)]. [CB/15/198]
18. ULL has introduced policies, processes and guidelines to ensure that proposed changes and material events are consistently and rigorously assessed and scrutinised, and that TfL is notified and consulted in accordance with clear commitments. The

policies include the Change Management Policy (subsequently, the Product and Process Change Management Policy) [Jones 2 at §10(a)], [CB/19/348] and a breach reporting policy [Jones 1 at §32], [CB/15/198-199] both of which were adopted by the Board in February 2018. These added to various other policies and documents that were already in place, including a "requirements codification" document, setting out the regulatory requirements that apply to ULL [Jones 1 at §33]. [CB/15/199-200] ULL has conducted training to ensure that these new policies are properly embedded – see, for example [Jones 2 at §11]. [CB/19/348]

19. ULL has set up a Licensed Operations Management Committee "LOMC", with day-to-day responsibility for overseeing ULL's licensed activities. The LOMC guidelines include deadlines for contacting TfL about certain categories of change or development.
20. ULL has resolved to set up an "independent assurance procedure" to review and validate for the Board the effectiveness of the systems, processes, procedures, oversight and compliance mechanisms that ULL has put in place to make sure that it meets its regulatory obligations [Jones 2 at §13] and has appointed Linklaters, an international law firm, as the external assurance team [Elvidge 4 at §4]. [CB/19/349] [CB/21/370] This procedure will be overseen by James Heaton-Smith, who was appointed as Head of Compliance at the start of June 2018 [Elvidge 4 at §8]. [CB/21/371]
21. In February 2018, ULL introduced a new policy on reporting allegations of criminal behaviour to the Metropolitan Police Service [Jones 1 at §59-60]. [CB/15/206-207] ULL is now considering how to achieve a greater consistency of approach across the country as a whole [Elvidge 4 at §16]. [CB/21/372-373]
22. ULL has introduced a new tool for assessing patterns of behaviour in relation to dangerous driving and interpersonal conduct, which allows ULL to aggregate complaints across categories when considering whether to deactivate a driver's account on the App [Elvidge 4 at §15]. [CB/21/372] ULL has also conducted a review of historic complaints, in which complaints were aggregated using the tool, and more credibility was given to the passenger's version of events where it was a case of one person's word against another's [Jones 2 at §45]. [CB/19/356]

23. ULL has introduced a safety steering group, to provide operational support on safety matters, including safety policies and processes [Jones 1 at §17]. [CB/15/194]

**ULL: CULTURE**

24. ULL outlined some of the cultural and governance changes that it is in the process of making in a "Culture and Governance" submission to TfL in November 2017. Among other things, this covered changes to incentivise teamwork and collaboration over individual successes [Elvidge 1 at §125]. [CB/14/160]
25. ULL's strategic priorities for 2018 include being a trusted partner for cities and regulators [Elvidge 1 at §98], [CB/14/151-153] and Mr Elvidge has identified various specific actions to support these goals [Elvidge 3 at §40]. [CB/18/331-332]
26. The directors of ULL have done several practical things to ensure that Uber's new culture is truly embedded within ULL. These include:
- (a) appointing a Team Engagement Programme manager, who is responsible for thinking about specific measures to change ULL's culture;
  - (b) emphasising the importance of culture at ULL strategy days; and
  - (c) relaunching a "cultural champions" policy, under which members of staff are nominated by their peers for displaying behaviours that are consistent with the cultural norms [Elvidge 3 at §40]. [CB/18/331-332]
27. In February 2018, ULL initiated new governance training for every member of staff, which both highlights Uber and ULL's values and also helps staff to understand changes to systems and process that are intended to support those values [Powers-Freeling 2 at §19]. [CB/20/365]
28. In May 2018, ULL conducted a series of workshops on what the global cultural norms mean, in practice, in the UK [Elvidge 4 at §16], [CB/21/372-373] and the cultural norms, and the way in which they affect recognition, rewards and promotions, were also covered at all-hands meetings in May [Elvidge 4 at §17]. [CB/21/373]

**IN THE WESTMINSTER  
MAGISTRATES' COURT**

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

**BEFORE THE SENIOR DISTRICT  
JUDGE (CHIEF MAGISTRATE)**

**B E T W E E N:**

**UBER LONDON LIMITED**

**Appellant**

**-and-**

**TRANSPORT FOR LONDON**

**Respondent**

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**APPELLANT'S  
SKELETON ARGUMENT**

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