

Appellant
T ELVIDGE
First
EX1
26 February 2018

IN THE WESTMINSTER MAGISTRATES' COURT

BETWEEN

UBER LONDON LIMITED

Appellant

- and -

TRANSPORT FOR LONDON

Respondent

FIRST WITNESS STATEMENT OF THOMAS ELVIDGE

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

A. INTRODUCTION

1. I am authorised to make this statement on behalf of the Appellant, Uber London Limited ("ULL"), and do so in support of ULL's appeal against the decision [EX1/B/62] of the Respondent ("TfL") not to renew ULL's private hire vehicle ("PHV") operator licence [EX1/D/3] under the Private Hire Vehicles (London) Act 1998 (the "1998 Act") [EX1/C/2], which expired on 30 September 2017. ULL appealed that decision by way of a complaint to the Magistrates' Court on 13 October 2017 [EX1/D/39] and, pursuant to s. 26 of the 1998 Act, continues to operate in the meantime.

2. In this statement, I have used several defined terms, all of which are included in the accompanying glossary. I should be clear at the outset that, in this statement, I refer to ULL and to individual companies within the global Uber group when there is a need to be specific but, when referring to the business as a whole, or to a number of entities in the global business where there is no need to be specific, I refer simply to "Uber".
3. I am an executive director of ULL, and am also the General Manager for Uber in the UK and Ireland. As such, I lead Uber's business operations in the UK, which includes (predominantly) ULL's activities as a licensed private hire (that is, pre-booked minicab) operator, which is the subject of this appeal.
4. I joined Uber in September 2014. Initially, I managed Uber's operations in Leeds and Newcastle before moving to London as the general manager in September 2015. In this role, I was responsible for our London operations, which meant that among other things I managed driver engagement and communications, oversaw changes to operations settings, and was also one of the points of contact with TfL. In January 2017, I became Head of Partner Channels for Uber in the UK and Ireland (which meant that I was responsible for our interactions with, and support for, drivers). On 18 August 2017, I was appointed a director of ULL and, in September 2017, I took on my current role as the General Manager for the UK and Ireland.
5. Before I started working for Uber, I had roles at Accenture, Moorhouse Consulting and Goldman Sachs. While at Moorhouse, I spent two years as a consultant at the Department for Transport, working with their strategy team on various proposals to be put to the Secretary of State. At Goldman Sachs, I worked on the implementation of, and ongoing compliance with, a slew of complex new regulatory requirements that were introduced following the global financial crisis. I therefore have experience of working in highly regulated sectors and on developing compliance requirements, which has been valuable to me in my current role.
6. I want to make it clear at the outset that I firmly believe that ULL is fit and proper, and that Uber provides an exceptional and highly-valued service to the people who use the Uber software application (the "App") and I do not accept all of TfL's criticisms. However, I do accept that Uber, and ULL, have not always got things right, and I apologise to App users and also to TfL for that. In the last year or so, a combination of factors has required us to confront the painful reality that, as an organisation, we have sometimes fallen short.
7. Although ULL itself has not been implicated in some of the behaviour for which Uber has been heavily criticised, ULL must accept - and address - a number of the criticisms set out in TfL's decision letter (the "Decision Letter") [EX1/B/62]. In short, I accept the following of TfL's criticisms of ULL.
 - (a) We provided inaccurate and inconsistent information to TfL as to the process by which bookings are accepted through the App.

- (b) We should have been more open and transparent in our communications with TfL in relation to the potential misuse of technology known as "greyball" for the evasion of regulatory and law enforcement, although it is not disputed that such misuse did not take place in London or anywhere in the UK and Ireland, as we made clear to TfL.
- (c) We acknowledge that TfL has raised legitimate concerns about elements of the service provided by Push Doctor, an online GP service that we told potential drivers about when helping them to obtain their PHV driver's licence from TfL. We should have documented our considerations about the service more carefully and communicated more openly with TfL on this issue. Similarly, we should have communicated more proactively with TfL when we recommended to PHV driver applicants that they use a provider called Onfido for their background checks, also in support of drivers' applications for a PHV driver's licence from TfL.
- (d) I also accept that ULL should have been in a position to communicate in a timely and accurate way with TfL in relation to a data breach that occurred in 2016, but of which ULL only became aware in November 2017.
8. We have been working hard to identify the areas in which we have made mistakes, the reasons for those mistakes and the steps we need to take to address them. I explain in this statement the work that we have done and are continuing to do to improve our structures, processes, policies and culture, and why I believe that the Court should be satisfied that ULL is fit and proper.
9. In the course of making this statement I shall refer to a number of documents, a paginated bundle of which is shown to me marked "[EX1]". Unless stated to the contrary, references to documents in this statement refer to this bundle and take the form "[EX1/x/y/z]", where "x" is the section, "y" is the tab number and, where relevant, "z" is the page number.
10. Except where otherwise stated, the facts and matters set out in this witness statement are within my personal knowledge. Where they are not, I identify the source of my understanding and belief. In particular, I have read in draft the witness statement of Laurel Powers-Freeling, who is the independent non-executive Chair of ULL's Board of Directors (the "Board"). Her statement discusses the changes that she has been driving in relation to our corporate governance. I have also read in draft the witness statement of Fred Jones, who is my fellow executive director of ULL, and who discusses the practical ways in which our corporate governance processes have changed, as well as some specific issues in relation to the reporting of allegations of criminal behaviour to the police. I will refer to their statements in the format [Surname1/x], where "x" is the paragraph number.
11. I have divided my statement into a number of sections, as follows. The first few sections cover relevant background, and the remaining sections reflect the provisional issues list as agreed between the parties on 15 January (the "Provisional Issues List") [EX1/D/47].

- Section B: The London private hire statutory framework
- Section C: Uber
- Section D: Uber in the UK and Ireland
- Section E: ULL's licensing history
- Section F: Transparency regarding acceptance of bookings
- Section G: Greyball
- Section H: Data breach
- Section I: Safety
- Section J: Acceptance of bookings – compliance of model with 1998 Act
- Section K: Conclusion

B. THE LONDON PRIVATE HIRE STATUTORY FRAMEWORK

12. It may be helpful to begin by summarising the applicable statutory framework, which is key to this appeal.
13. PHVs are subject to a specific licensing regime in London under the 1998 Act [EX1/C/2]. This regime, which is concerned with consumer protection and particularly the safety of passengers, is distinct from both:
 - (a) the regime that applies to black taxis or "hackney carriages"; and
 - (b) the regime that regulates PHVs in the rest of England and Wales, which is set out in the Local Government (Miscellaneous Provisions) Act 1976 (the "1976 Act") [EX1/C/1].
14. The licensing and regulatory authority for private hire under the 1998 Act [EX1/C/2] is TfL. TfL is the integrated transport authority for London, responsible for delivering the Mayor of London's strategy and commitments on transport, as summarised at [EX1/D/56]. As the statutory body responsible for public transport in London, its role encompasses the direct provision and commissioning of transport services (such as the London Underground and bus services), as well as the licensing and regulation of commercial operators, including PHV operators.
15. The PHV licensing regime is centred around three licences. These are:
 - (a) **A private hire driver licence**, which is issued based on a health assessment of the driver conducted by a medical professional, a criminal background check, and certain other qualifying characteristics.
 - (b) **A PHV licence**, which is issued based on the age, type, emissions and condition of the vehicle. Such licences are issued to the owner of the vehicle, who may or may not also be the driver.
 - (c) **A private hire operator licence**, which, under the 1998 Act [EX1/C/2], TfL is required to grant where it is satisfied that the applicant is a "fit and proper person", meets any requirements prescribed by TfL, and has provided an application form and paid the appropriate fee.
16. A licensed private hire driver may only carry out a private hire booking using a licensed PHV, and only where the booking has been accepted by a licensed operator in accordance with the 1998 Act [EX1/C/2] and the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000 (the "2000 Regulations") [EX1/C/3]. It is an offence for any person to accept (or to make provision for the invitation or acceptance of) PHV bookings in London without a PHV operator licence.
17. The 1998 Act [EX1/C/2] does not specify what is meant by "*fit and proper person*". However, TfL has issued guidance (the "**Operators' Guidance**") for applicants for a PHV operator licence [EX1/D/79/1135-1138], which explains that, in order to be considered to be "fit and proper":

... applicants will be expected to demonstrate that they have complied with other legal requirements connected with running a business.
[EX1/D/79/1135]

18. The Operators' Guidance also lists "*administrative rules*" for any person named in the application, which TfL says that it "*will follow in reaching decisions on applications for operator's licence(s)*" [EX1/D/79/1135-1137]. These relate to prior convictions, bankruptcy, director disqualification orders, requirements relating to health and safety, accounts and insurance, and details of any prior licence refusals, revocations or suspensions.
19. The Operators' Guidance further explains that TfL compliance officers will conduct an inspection of the operating centre(s) named in the application, during which the applicant will need to demonstrate compliance with the administrative rules [EX1/D/79/1137-1138]. The applicant will also need to satisfy the TfL compliance officers that it is aware of the responsibilities of a licensed private hire operator set out in the 2000 Regulations.
20. The 1998 Act [EX1/C/2] provides that PHV operator licences shall be granted for five years. However, there are exceptions to this. TfL can grant a shorter licence where it considers it to be appropriate in the circumstances [EX1/C/2/98]. In addition, TfL has powers under the 1998 Act [EX1/C/2] to suspend or revoke a licence during the licence term for "*any reasonable cause*", including that it no longer considers the operator to be a fit and proper person or where it has breached a condition of its licence [EX1/C/2/109]. Such suspension or revocation may be with immediate effect if TfL considers this to be in the interests of public safety; otherwise, an operator may continue to operate for a further 21 days or, if it challenges the decision, until the conclusion or withdrawal of its appeal [EX1/C/2/110].
21. Once licensed, operators must comply with various obligations in terms of their processes, records, and customer handling. One requirement is that all bookings must be accepted at the operator's licensed operating centre, which is named in the operator's licence. There are also a number of record-keeping obligations in relation to bookings as well as to the licensed drivers and vehicles available to the operator. Further conditions require specific procedures for complaints, lost and found property and the sending of booking confirmations to passengers (to whom Uber internally refers as "riders") prior to commencement of the journey. TfL also has discretion under the 1998 Act [EX1/C/2] to impose specific licence conditions on individual operator's licences.

C. UBER

22. Uber's mission is to give people access to safe, affordable and reliable transport at the touch of a button. It does this by providing passenger and driver Apps, which helps to connect drivers and passengers.
23. The original version of the App launched in 2009 in San Francisco, California. It started life as a limousine hire service, before evolving, a few years later in some markets, into a peer-to-peer ride-sharing app (that is, it enabled people with a car to make money with their vehicle by being connected, through the App, with people who wanted to make a journey in a car).
24. Since it was first established, Uber has revolutionised the way in which people get around cities across the world. Use of the App has grown extremely rapidly: Uber now has a presence in over 600 cities worldwide and there are around 75 million active users of the Uber passenger smartphone app (the "Passenger App"). This rapid growth has meant that Uber has had comparatively little time to develop from being a small start-up with a handful of employees to a large global business operating around the world in a variety of markets with different regulatory regimes, which have not necessarily contemplated the rapid development of new, digital services and non-traditional business models.
25. The process of fitting Uber's operations into regulatory regimes around the world has undoubtedly presented challenges, for both Uber and its regulators. As a growing company with a global footprint, as well as something of a "digital disruptor" mindset, Uber has, historically, struggled to tackle these challenges. However, as the business has matured, it has also recognised that serving our App users necessitates rising to that challenge wherever we operate, including by communicating what we do, and how we do it, to our regulators, drivers, passengers and the world at large, in a clear and helpful way. We have therefore committed to going far further than we ever have previously in ensuring that we meet that challenge now and in the future.
26. As Ms Powers-Freeling explains in her statement at [Powers-Freeling1/9(b)], the growing pains that Uber has suffered are not unique, but the speed of its growth – and some of the choices that it has made in the past – have intensified those pains. 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-term partnerships with all its stakeholders. If there is one thread that runs through the rest of this statement, it is my belief that Uber must be a true partner for its regulators as much as for its App users.

D. UBER IN THE UK AND IRELAND

27. Uber's operations are split for management purposes into a number of 'mega-regions', one of which is Europe, the Middle East and Africa ("EMEA"). Each mega-region is led by a Vice-President, who is a member of the Executive Team of Uber Technologies Inc. ("UTI"). UTI is the ultimate parent company of the Uber group and, as such, the UTI Executive Leadership Team, led by the CEO, is the ultimate executive body of Uber globally, answerable to the Board of UTI. In our "Culture and Governance" submission to TfL dated 30 January 2018 [EX1/B/106], we outlined this structure and the enhancements that have been and are being made to the UTI governance structures, as described by Mr Jones in his statement at paragraphs [Jones1/16-33]. What I explain below is the current management structure; it has changed over time and it is fair to say that lines of responsibility and communication are clearer now than they used to be, and the level of autonomy afforded to country managers is less than it was when Uber was first established in London.
28. The Vice-Presidents responsible for each mega-region report to the Chief Operating Officer of UTI. They are responsible for setting financial and operational targets, such as revenue, marketing spend, and headcount, in accordance with those set out globally by UTI and tracking performance against these.
29. Each mega-region is then split into a number of regions or countries, each led by a Regional General Manager or General Manager, who is responsible for Uber's operations in that region or country. As I have already mentioned, I am the General Manager for the UK and Ireland. In this role, and as an executive director of ULL, I am, with my co-directors, charged with securing that ULL can continue to operate as a licensed PHV operator, including by ensuring that it complies with its regulatory obligations. Within the framework of the policies, strategic priorities and budgets set by UTI, I am accountable, through the management structure, to the UTI Executive Leadership Team for the performance of the UK and Ireland business and the decisions made by the management team that I lead.
30. Prior to my appointment, Uber's operations in the UK and Ireland were led by Jo Bertram, the then-Regional General Manager for Northern Europe. Ms Bertram built Uber's business in the UK, and latterly across Northern Europe, from a very early stage, with remarkable speed and success. I worked with her throughout my time at Uber and admired her and enjoyed working under her leadership.
31. Within Northern Europe, London was by far the largest market and the largest of Uber's operations, and Ms Bertram continued to be based in the London offices even once she had assumed a regional role. For this reason, Ms Bertram remained heavily involved in ULL's licensed business in London and continued to take the most important decisions in relation to it until her subsequent resignation. Uber is in the process of recruiting a new Regional General Manager for Northern and Eastern Europe, to whom I will report once they are in place (which is expected to be in April/May 2018). In the interim, I report directly

to Pierre-Dimitri Gore-Coty, the EMEA Vice-President. This means that, although decisions about ULL's operations rest with me and the Board, I discuss with him decisions about budget allocation and performance against targets, including any substantial new investments that would materially affect budget performance, such as a significant increase in headcount.

32. Alongside these operations organised geographically, a number of support functions are more centralised in their organisation [EX1/B/89/460]. For example, our in-house legal teams report to an associate general counsel for the relevant mega-region, who reports directly to UTI's Chief Legal Officer, Tony West. Mr West, in turn, reports directly to the CEO.
33. ULL is a wholly-owned subsidiary of Uber International BV, a holding company established in the Netherlands that is ultimately owned by UTI.
34. ULL does not itself own or license the App, nor does it contract with the self-employed drivers who undertake trips booked via the App; those roles are performed – for the entirety of EMEA and indeed most countries outside the USA – by Uber BV, which also employs some of the Uber staff who have roles in centralised support functions. This is a structure that was established when Uber first began to expand beyond the USA.
35. Uber BV is also the data controller for most countries outside the United States, and ULL has a data processing agreement [EX1/D/11] with Uber BV, which is regulated under the Dutch Data Protection Act. Both ULL and Uber BV are subject to intra-group security arrangements that stipulate global security arrangements for data [EX1/D/11/268].
36. ULL provides services to Uber BV, including: (i) holding the private hire operator licence, and performing the functions of the licensed operator, in London; (ii) for promoting Uber and the App to potential and existing drivers and passengers; and (iii) sharing information with existing and potential drivers and passengers about Uber, and vice versa.
37. As such, ULL:
 - (a) is the legal entity that undertakes the licensed activity of being a PHV operator in London;
 - (b) employs staff to ensure that we fulfill our regulatory obligations (for example, we have teams of people who are focused solely on complaint management and reporting, managing passenger lost items, managing driver documentation and dispatch configuration, amongst other functions) as well as those working in support functions that are managed on a mega-region basis (such as legal) and those involved in some of Uber's non-licensed businesses;
 - (c) undertakes the "on-boarding" of drivers, i.e. encouraging and supporting them in signing up to the App and complying with the regulatory requirements for becoming and remaining licenced PHV drivers;

- (d) runs the operating centre;
 - (e) recommends configurations for the App to reflect regulatory requirements in London;
 - (f) runs local promotions;
 - (g) manages lost property; and
 - (h) maintains all relevant records for regulatory purposes (e.g. booking records and complaints records).
38. I should note, for completeness, that licensed activities outside London are undertaken by a number of other legal entities in the rest of England and Wales, Scotland and Northern Ireland (including Uber Britannia Limited (“UBL”), which holds the licences for all licensed areas in England and Wales outside London).
39. Since Uber’s service first arrived in London in 2012, it has always been operated as a TfL-licensed business, because it was clear that a peer-to-peer service (which continues to be Uber’s model in some jurisdictions) would not have been compliant with the private hire licensing regime that I have described above.
40. In short, for the purposes of the 1998 Act [EX1/C/2], ULL accepts private hire bookings from users who have signed up to the Passenger App. Bookings are carried out by TfL-licensed, self-employed PHV drivers who have signed up to use the driver App (the “Driver App”). The Driver App allows them to decide whether or not they are willing to contract with a passenger for a particular trip, to receive booking details and to communicate with their passengers.
41. ULL is unusual in London because my understanding is that it is the only digital-only/app-only PHV operator. The vast majority of PHV operators in London operate on a “traditional” phone line, radio system and minicab model, with a small number of cars. There are also a small number of larger PHV operators that offer an app-based booking service but also accept bookings by other means, such as via a telephone booking line.
42. While ULL is therefore somewhat different in this regard, it must comply with all of the regulatory requirements under the 1998 Act [EX1/C/2], just like any other operator. It is ULL’s responsibility to ensure that it does so, and that has required numerous changes to the standard Uber App, operating model and other processes.
43. As a result, ULL has been, from the start, very different from most other Uber operations worldwide. The operations, systems and processes developed to comply with the specific regulatory framework include:
- (a) a bespoke, high-tech system for uploading, processing and retaining driver documents (to ensure we could meet the particular record-keeping and document compliance requirements for PHV drivers in London as driver numbers grew); and

- (b) a lost property service for London, which was not required anywhere else that Uber was operating at that time.
44. Since ULL received a PHV operator licence from TfL in May 2012, it has grown extraordinarily quickly to become an integral part of the London transport network.
- (a) When ULL first began operating, it was based in a very small office near Edgware Road employing only a handful of people. Ms Bertram joined the business shortly after and led it until August 2017. By the end of 2012, there were approximately 300 drivers registered to use the App to provide rides in London.
 - (b) Between May 2012 and now, more than 9.1 million people in the London area have registered to use the App. As at January 2018, just under 3.6 million App users have taken a trip booked with ULL in the last 12 weeks. There are now approximately 48,000 active drivers registered to use the App in London. Drivers using the App have now become a well-established part of the London transport network, and are particularly important in areas where it is difficult to find alternate means of transportation: this point is well-illustrated by the fact that, in London's morning rush hour, more than 30% of trips booked through the App start or end within 200 metres of a train station. We now employ nearly 300 people and are based in a two floor office in Aldgate Tower.
45. This fast expansion, coupled with the need to apply a long-established and complex regulatory regime to innovative technology and business models, has contributed to some of the challenges that we have faced, and indeed some of the mistakes that we have made. However, I can say that in my own experience ULL has consistently been committed to being a responsible operator that makes the London transport network more convenient, more accessible, greener and, most importantly of all, safer. ULL deploys a number of well-developed and innovative safety features in the periods before, during and after trips, including the following.
- (a) Driver details, the vehicle model and the registration number are provided to passengers, and passenger details are provided to drivers, before the trip begins. In fact, in 2016, TfL then subsequently introduced regulations requiring other operators to do the same [EX1/C/5/162].
 - (b) Passengers can easily share their trip details, including their live location and estimated time of arrival, with friends and family. In addition, the App records comprehensive data on every journey, including detailed GPS data, which we can refer back to if necessary.
 - (c) We can also be in constant contact with passengers and can track the vehicle and driver throughout and after the journey. As a result, we are well equipped to monitor and react in any given situation.

- (d) In addition to our ratings system, which allows passengers to give drivers 1 to 5 star ratings and provide comments on their driver and trip as standard practice, we have a highly developed, and evolving, complaints system. This system is easily accessible to passengers, via the App, at any time of day. As explained in correspondence with TfL, ULL classifies complaints that are related to passenger or driver safety and security as "urgent" [EX1/B/58/244]. ULL always aims to respond to the most serious complaints immediately, and we are proud of the fact that we provide an initial response to 99% of complaints classed as urgent, and 60% of all complaints, within 24 hours [EX1/B/41/1161]. In particular, as explained in a presentation given to TfL on our complaints-handling dated 10 January 2018, for safety-related complaints, such as physical altercations and non-consensual touching, our average response time in 2017 was 3.1 hours, and 91% of these were responded to within six hours [EX1/D/46/786].
- (e) ULL takes pride in the fact that many drivers using the App offer services designed specifically for vulnerable passengers or passengers requiring assistance (e.g. uberASSIST) and those who require wheelchair accessible vehicles (e.g. uberACCESS). The Uber drivers that provide these services do so at the same cost to the passenger as a standard uberX service. Although there is not obligation on private hire provider to provide a specially adapted or "designated" vehicles, 708 drivers have been trained by external providers on providing a service through uberASSIST, and the average wait time for an uberACCESS vehicle in London is between 12 and 13 minutes. Disability charities and campaign organisations have pointed out the benefit provided to disabled people by being able to order an accessible car to their door within minutes through the use of the App [EX1/D/38/604].
46. In addition to our constant efforts to improve the App user experience, we also work to optimise Uber's impact more generally. For example, we are firmly committed to reducing emissions in London. At present, around 50% of miles driven by drivers using the App each week in the UK are in Hybrid or Zero Emission Vehicles. In early September last year, we set out our ambitious zero-emission goals for London [EX1/D/35]. These include a goal that all vehicles using the Uber App in London be fully-electric by 2025.

E. ULL'S LICENSING HISTORY

Five year licence - 2012-2017

47. ULL was first granted a five-year operator's licence by TfL on 31 May 2012 [EX1/D/3]. This licence did not contain any conditions specific to ULL. ULL's licence remained valid during the entire five year term until its expiry on 30 May 2017; at no point during the course of the licence term did TfL suspend or revoke ULL's licence, or, as far as I am aware, suggest to ULL that it had concerns as a result of which it was considering suspension or revocation.

First renewal application – February to May 2017

48. On 28 February 2017, more than three months prior to the expiry of its licence, ULL applied for its licence to be renewed [EX1/D/20]. Ms Bertram, the then-Regional General Manager for Northern Europe, was the nominated representative on ULL's licence. Although my role at the time (which was concerned primarily with the actual operations of the business, particularly on the driver side) did not involve overall responsibility for this application and the correspondence surrounding it, I did review and comment on the letters between TfL and Ms Bertram regarding ULL's licence renewal that are exhibited at [EX1/B/32] [EX1/B/33] [EX1/B/34] [EX1/B/36]. I was also aware of the on-going application, not least because, in my role as London General Manager, I attended the quarterly review meetings with TfL during this period.
49. Shortly after that licence application was made, at the beginning of March 2017, allegations about Uber's misuse of a technology function known as "greyball" were made in the US media [EX1/D/22]. The central allegation was that this function (which allowed the view of the App seen by particular users to be modified) was being used by Uber to evade or interfere with regulatory or law enforcement activity. Although I was aware of the greyball function, which was and is used for many legitimate purposes, such as internal testing of new products and marketing campaigns, this was the first time that I became aware that greyball technology had allegedly been used in certain jurisdictions to evade or interfere with regulatory enforcement or that such use had even been contemplated. I specifically address the greyball issue in more detail at paragraphs [100] to [129] below.
50. On 9 March 2017, Uber made a public statement in response, announcing that a review was already underway and that Uber was expressly prohibiting the use of greyball to target regulators, with immediate effect [EX1/D/24].
51. Understandably, TfL sought information from us about these allegations, and there was a series of letters between TfL and ULL between the publication of the article and TfL's response to the licence renewal application on 16 May 2017 [EX1/B/32/124-125]. In the letter, TfL stated that it had not yet come to a decision in respect of ULL's application, and that it was considering issuing a short duration licence because it required further information relating to the use of greyball, the collection of personal data and our booking process. TfL requested that we allowed it access to our offices and systems, so that its team

could review some of this information (relating to the booking process) for themselves. There followed a series of letters between TfL and ULL, and I have described key correspondence below.

52. On 18 May 2017, we responded to TfL's information requests [EX1/B/33/128], informing them that preliminary analysis suggested that nothing untoward had taken place in London. On 26 May 2017, TfL wrote to inform ULL [EX1/B/34/132] that it would issue ULL with a four-month licence valid until 30 September 2017 (the "Short Licence"). In that letter, TfL concluded that: (i) ULL was a fit and proper person to hold a licence; and (ii) ULL's operations were compliant with the statutory framework, based on the information available to TfL at that time. However, TfL explained that it was pursuing ongoing enquiries that might affect these conclusions, and that they needed more information, including in relation to greyball.
53. In our letter to TfL on 4 August 2017 [EX1/B/47/197-199], we explained a number of changes that we intended to make to ULL's governance structure. These are described in more detail in Mr Jones's witness statement at [Jones1/16-33]. Their main purpose was to ensure that responsibility for the licensed operations in London – the heart of ULL's business – was vested in a group of senior individuals with fiduciary duties. As such, we formalised Ms Bertram's position as Director, to reflect the fact that she was clearly directing ULL's business, and, at the same time, I (along with Mr Jones) was appointed a Director of ULL. Mr Jones and I took over management responsibility for ULL's licensed operations from Ms Bertram as part of the transition to the new arrangements set out in the 4 August 2017 letter. My service agreement with ULL includes requirements that we comply with the Articles of Association, abide by our statutory, fiduciary and common-law duties as directors and do such things as are reasonable and necessary to ensure compliance by ourselves and by ULL with the Companies Act 2006 [EX1/D/32/534-536].
54. Part of the rationale for these changes was that Mr Jones and I could be completely focused on the UK and Ireland business and the licensed operations in particular, without having to balance that with any wider, international remit. As I saw it at the time, this was a frank recognition that we needed to dedicate more senior management attention and accountability to our licensed business as a distinct business with distinct responsibilities — and that it was not conducive to performing that role for those responsible for ULL's licensed operations also to have managerial responsibility in other markets. It was also a necessary acknowledgment that, as I explain below, Ms Bertram's wider role led to her exposure to conduct that would rightly never have been contemplated in the UK and that, in order to put the repercussions of that behind us, we needed to make a demonstrable change not only in structure but also to the leadership of ULL's licensed business.

Second renewal application – August 2017

55. On 18 August 2017 (six weeks prior to the Short Licence expiry date), ULL submitted an application to TfL to renew its licence [EX1/D/33]. Although Ms

Bertram was included in the licence application as a named director of ULL, I was listed as the nominated representative.

56. Shortly after the application was made, Ms Bertram resigned her ULL directorship and Mr Jones and I took over full responsibility for the oversight of ULL's licensed activities. We informed TfL of this change on 31 August 2017 in a letter [EX1/B/57] that explained that:

conscious of the need to minimise any complication to the licence renewal application, [Ms Bertram] will hand over responsibility for the licensed activities relating to our private hire operations in London over a much shorter time frame, consistent with managing such an important transition, such that she will have no ongoing role in connection with our licensed activities by 19 September [EX1/B/57/237].

57. On 22 September 2017, TfL wrote the Decision Letter, informing ULL that it had decided not to grant ULL a renewed licence on the basis that it was not satisfied that ULL was fit and proper [EX1/B/62]. TfL also issued a formal public notice of its decision [EX1/D/36]. As TfL has confirmed [EX1/B/62/279], ULL is entitled to, and does, continue to operate in London pending the outcome of its appeal in accordance with the 1998 Act [EX1/C/2/117].
58. On 2 October 2017, Ms Bertram announced that she was leaving Uber entirely. In doing so, she said that, "[g]iven some of our current challenges, ... now is the right time to have a change of face." [EX1/A/3/5]. While I was not involved in the discussions about her departure, I have to agree with Ms Bertram's own assessment: it was clear that her continued presence in ULL would not give us the best chance of retaining our licence and moving forward.

ULL's future as a licensed operator

59. The mistakes Uber has made, and which have come to light in the past year, as well as the heavy criticism it has faced in many quarters since, have led to a period of intense corporate reflection. ULL's business has been very much part of that process. It has accepted it needs to undergo profound change in the way it does its business, and in particular it interacts with its regulator, even if this means slowing down or stopping some of the ways in which it seeks to innovate in its service and drive up the use of, and demand for, PHV services. In addition to the broad cultural change that Uber is going through globally and locally [EX1/B/106], ULL is continuing with a significant programme of specific governance changes.
- (a) As Mr Jones explains in his statement [Jones1/16-33], we have already made a number of changes to our corporate governance arrangements, policies and procedures.
- (b) As Mr Jones also explains [Jones1/24], on 1 November 2017, we appointed Ms Laurel Powers-Freeling as an independent non-executive Director to hold the post of Chairman of the Board. Part of the reason for appointing Ms Powers-Freeling is our recognition of the fact that this is

just the beginning of an ongoing process for ULL and that ULL is strengthened by having an independent, experienced Board member demanding and driving forward a rigorous approach to governance and compliance.

- (c) We will also be appointing further non-executive Directors to support Ms Powers-Freeling in her role. We will be discussing a shortlist of candidates at our next board meeting, scheduled for 27 February 2018.
- (d) As discussed by Mr Jones in his statement at paragraph [Jones1/64], we are in the final stages of hiring a UK Head of Compliance, who will be responsible for ULL's compliance programme.

60. We have sought to explain these changes, and our other future plans, to TfL, in order to ensure that they are fully informed of the steps that we are taking to change the way that we operate. This has involved the preparation and discussion with TfL of a number of submission documents, covering our licensed operations, our culture and governance, and a number of broader contextual issues. In each case, we have presented TfL with a draft for discussion, they have provided comments, and we have amended the submission in light of those comments. As such, there are a number of versions of each of these submissions in the exhibit.

- (a) Our "Culture and Governance" submissions ([EX1/B/100] and [EX1/B/106]) outlined ULL's new structure and the enhancements that have been and are being made to the UTI governance structures. We committed to coming forward proactively with information on "any issues in which TfL has an interest as a regulator" [EX1/B/106/622].
- (b) In a further submission on Licensing, we made it clear that we would accept an explicit licence condition to the effect that ULL must have a policy prohibiting the use of greyball for impeding or avoiding regulatory or law enforcement across Uber in all jurisdictions [EX1/B/101/579]. We also set out a number of changes we have made in response to TfL's concerns [EX1/B/79], [EX1/B/101]. On police reporting, for example, we described the ambitious targets we have set for ourselves on safety-related complaints handling for 2018. ULL also set out how safety will be one of four core priorities for the business in 2018 with the aim of reducing the incident rate in the UK along with some of the practical steps taken to achieve this, including with corporate governance changes, appointing a new head of safety and developing and implementing a policy on reporting incidents to the Met and providing training for employees. We also give specific commitments to notify TfL of any changes to our operating model, with minimum notice periods depending on the likely significance of the issue to TfL [EX1/B/79/391], [EX1/B/101/582].
- (c) In a submission on our application for the renewal of our licence, we responded to some of the specific concerns raised in the Decision Letter, and also describe our new corporate responsibility processes [EX1/B/75].

- (d) In two further submissions we addressed TfL's concerns about our operating model in relation to the acceptance of bookings ([EX1/B/87] and [EX1/B/99]). We explained that for bookings in the London area, no drivers other than TfL licensed drivers would be included in the dispatch process. We were clear that we will now we will now accept bookings before confirming the availability of a driver with ULL's acceptance being explicitly confirmed to the rider in the App. In addition, we committed to changing our cancellation process so that after a driver has waited for 8 minutes bookings will be automatically cancelled. We also set out the impact the changes will have on passengers but also on drivers and how we intended to attempt to mitigate that impact ([EX1/B/87/443-444] and [EX1/B/99/528-530]).
- (e) In our "Contextual Issues" submissions ([EX1/B/76] and [EX1/B/78]), we reaffirm our 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. We set out specific measures that we have now introduced or are considering introducing.
61. I will refer further to these where they are relevant to the specific issues. These discussions have continued through the period since the licence decision and have included meetings and calls between the Uber CEO, Dara Khosrowshahi, and the TfL Commissioner, between senior operational managers on both sides, and between technical and legal teams, often working in parallel to explore specific, detailed issues. I believe that this engagement has been of huge value to us in understanding TfL's concerns and perspectives, and helping us better to articulate how we are addressing those.
62. In the following sections, I address TfL's criticisms as set out in the Decision Letter [EX1/B/62] and the additional matters set out in the provisional Issues List agreed with TfL [EX1/D/47]. I explain in respect of each criticism: whether and to what extent, after careful consideration, ULL accepts those criticisms; what we have done and are planning to do to address them; and why I am confident that the steps that we have taken demonstrate that ULL is a fit and proper person to hold an operator's licence.

F. TRANSPARENCY REGARDING ACCEPTANCE OF BOOKINGS

63. In the Decision Letter, the first reason that TfL gives for its decision not to renew ULL's licence is that, in TfL's view, ULL had supplied misleading information about the way in which bookings are accepted (for regulatory purposes) through the App. Specifically, TfL's criticism is that:
- (a) ULL gave false and misleading information in correspondence in 2014 and in its evidence in a Part 8 claim about whether the App is an illegal taximeter, (the "Taximeter Case") as to the process by which bookings were accepted through the App, which was contradicted by other information in the public domain;
 - (b) the information was false in a material respect because it was relevant (or potentially relevant) to whether ULL's operating model complied with s.2 of the 1998 Act [EX1/D/47/800], [EX1/B/62/268], [EX1/C/2];
 - (c) this misinformation must have been given knowingly, or else recklessly or negligently, on the basis that ULL "*did not understand its own systems sufficiently (despite assertions to the contrary)*" [EX1/D/47/800] [EX1/B/62/277-278]; and
 - (d) that ULL failed to provide the clear, full and timely information that TfL requires as our regulator and then gave unconvincing explanations as to how this had happened [EX1/B/62/267-268] [EX1/D/47/800].
64. In order to assess TfL's criticisms, I have thoroughly reviewed the correspondence between ULL and TfL in relation to this issue. As set out in my chronological summary of that correspondence below, it is clear to me that some of ULL's letters to TfL were unclear, inconsistent and, on occasion, simply wrong.
65. ULL does not share TfL's view on the regulatory significance of the sequencing of various steps. However, the way in which ULL accepts bookings, and the sequencing of that process, is something in which TfL as regulator had and has a legitimate interest, and is entitled to seek information and expect that information to be complete and accurate. The simple fact is that ULL has not been as open with TfL as it ought to have been. Indeed, at times, it has been defensive. As a result, it has not provided the clear, accurate and timely information to which TfL was entitled. I do not know whether the failings identified could properly be described as "negligent" or "reckless" from a legal perspective but I fully accept that ULL gave information that was not always correct or was not sufficient. We should have thought far more carefully about our understanding of the App and the way that it fitted with the regulatory regime before we tried to explain it to TfL and we should have been more careful in giving information to our regulator. This is a situation that I deeply regret, and that I am determined to put right. This is a sentiment shared by the Board, and Uber's Executive Leadership Team globally, and - as I explain below - it is something that we are in the process of addressing, through a combination of personnel, process and governance changes. What I do not accept is that our provision of incorrect information was intentional. Nothing that I have seen or read supports such a conclusion.

66. Before I address TfL's criticisms specifically, it is necessary to explain in a little more detail what "acceptance of bookings" is and why it is important.
- (a) The "acceptance" of bookings is a regulatory concept and one that is peculiar to private hire regulation (and, to some extent, specific to the 1998 Act [EX1/C/2], which makes acceptance itself a licensed activity, unlike the position outside London). We and TfL agree [EX1/B/9/27] that it is a concept that is not entirely clear and that must be interpreted in a common-sense way to give effect to the purpose of the licensing regime (which I understand to be above all consumer protection, particularly as regards safety). It is not (or at least is not necessarily) the same as "acceptance" in a contractual sense or other ordinary meanings of the word, such as receiving. I address the regulatory concept of acceptance under the 1998 Act [EX1/C/2] in more detail at paragraphs [198] to [210] below.
 - (b) Our understanding is that acceptance, for regulatory purposes, involves the communication to the passenger that the booking request that he or she has made has been, or will be, allocated to a driver - with the consequential assumption by the operator of regulatory responsibility for those communications, the arrangements made for the fulfilment of the booking and for the associated matters required by regulations (such as record-keeping, complaints handling and lost property). It is that assumption of responsibility that I believe to be the heart of acceptance.
 - (c) ULL has always been clear that it assumes the responsibilities of the operator - that is ULL's core business, and I have already outlined how it fulfils those functions. When ULL was the only Uber entity acting as operator in the London area, the only question seemed to be whether drivers or Uber BV could be said to be performing some of the functions of an operator and therefore require a licence. We were clear that it was ULL that was responsible for all of the obligations of the operator.
 - (d) Shortly after I joined the team in London, in November 2015, we re-configured our systems so that in the London area (other than in a central London area comprising approximately zones 1-3 in which this never happened), booking requests would be offered via the App to drivers who were licensed by another licensing authority as well as those licensed by TfL. This (which is sometimes referred to as "cross-dispatch") is permissible because the licensing regime permits drivers to work outside their licensed area provided that the operator who accepts the booking and the vehicle used are both licensed by the same licensing authority as the driver. It made sense that drivers using the App who were licensed by authorities close to London could choose to take on trips in the outer edges of the Greater London Authority area. However, this change meant that, for any given booking request, the relevant operator could be either ULL or UBL, depending on which driver first indicated willingness to undertake the trip [EX1/B/18]. It was around this time, as a result, that the question of whether regulatory acceptance took place before or after

a driver had indicated willingness to undertake the trip came into sharper focus for ULL.

The 2014 correspondence

67. Our correspondence with TfL on the way in which bookings are accepted through the App started in January 2014, when TfL emailed us asking various questions about our operating model and its compliance with the statutory framework. [EX1/B/1] Relevantly for these purposes, TfL wanted to know whether Uber BV, ULL or drivers were making provision for the invitation and acceptance of, or accepting, bookings.
68. ULL responded briefly saying that it was accepting bookings as the PHV operator on the basis that it performed the various functions required of an operator, such as keeping journey records, registering drivers, handling complaints and managing lost property [EX1/B/2].
69. On 28 February 2014, TfL wrote to ULL [EX1/B/3/5], saying (among other things) that in order to satisfy itself that it is ULL (and not Uber BV) that is accepting bookings, TfL needed a more detailed explanation of the Uber booking process and associated data flows, and details of the timing and extent of any information flow from the passenger, through servers, and on to the driver.
70. In response, our letter to TfL dated 17 March 2014 [EX1/B/4/9] stated that ULL "is accepting bookings by receiving the information, processing it and arranging for the dispatch of the driver". We described the "process-flow of requests" as including the following:
 - (a) booking request made by Uber user via the App;
 - (b) request "*accepted by the dispatch server*";
 - (c) "*dispatch server selects ... driver and forwards details of client request to driver*".
71. On 8 April 2014, TfL wrote again to ULL [EX1/B/5/12-14], setting out its current understanding of the position relating to acceptance of bookings. In that letter, TfL acknowledged the relevance of the functions that ULL was performing to the question of whether it was accepting bookings as operator and raised a concern that the App terms and conditions should make clear that ULL accepts bookings. It went on to note that this was a legally important and complex issue and invited ULL's comments.
72. On 22 April 2014, ULL responded, providing a small amount of further information and proposing to amend the Uber BV terms of service in order to include explicit reference to ULL accepting the booking [EX1/B/6]. I should say that, although the content of the letter was relevant, I was taken aback by the particularly hostile tone.
73. On 16 May 2014, TfL responded, saying that the proposed amendment to the terms and conditions was unsatisfactory, and raising concerns about compliance

with the statutory regime [EX1/B/7/20-21]. ULL responded on 2 June 2014 [EX1/B/8], saying that it was concerned by TfL's suggestion of non-compliance, and setting out the reasons for which it did not agree.

74. On 10 June 2014, TfL invited ULL to make further representations on how the App works before TfL made any decision on its compliance with the statutory regime [EX1/B/9]. On 17 June 2014, ULL responded by providing more technical detail about the data flow process and systems that govern the acceptance of bookings, as follows [EX1/B/10/34].
- (a) *The customer's booking pick-up location is transmitted through the customer's GPS-enabled smartphone installed with the Uber App to ULL's licensed operating which is using hosted IT infrastructure, where it is accepted and logged on ULL's systems. It is instantaneously sent to the relevant driver. Also at the same time, ULL's systems will respond to the passenger by transmitting data held on its servers giving the driver's name, car type and registration.*
 - (b) *It is accepted that receipt and acceptance by ULL of the passenger's booking takes place at the same time as the relevant driver is notified of the booking. That is an inevitable consequence of the technology used. It does not alter the fact that ULL accepts the booking on behalf of the driver, evidences that acceptance by recording it, and confirms such acceptance by arranging for details of the relevant driver to be communicated to the passenger. It is also relevant here that ULL can, and occasionally does, refuse bookings.*
75. In the Decision Letter [EX1/B/62] and provisional issues list [EX1/D/47], TfL states that the 17 March 2014 and 17 June 2014 letters described above were misleading in that ULL "*clearly represented that it accepts the booking first, before then allocating it to the closest available driver*" [EX1/B/62/263] and [EX1/D/47/789-800].
76. In my view, the relevant letters were unclear and confusing and, on the sequencing point, either incorrect or very likely to have given a false impression.
- (a) In the 17 March 2014 letter, we stated that the booking request was "*accepted by the dispatch server*" before a driver was selected. While this suggests that "accepted" here may have meant no more than received (and I therefore do not agree that it was a "clear representation"), it was at best opaque and TfL was entitled to understand it to mean that regulatory acceptance occurred before a driver was identified, particularly as the letter does not otherwise identify the point of acceptance or identify when communication with the passenger takes place.
 - (b) In the 17 June 2014 letter, we stated that "*receipt and acceptance by ULL of the passenger's booking take place at the same time as the relevant driver is notified of the booking*". This was simply not correct - although these steps may happen very quickly, they are distinct and follow a

sequence as reflected in a later sentence, which states to the contrary:
"*... ULL accepts the booking on behalf of the driver, evidences that acceptance by recording it, and confirms such acceptance by arranging for details of the relevant driver to be communicated to the passenger*". I also think it is unclear whether we meant that it is an accepted booking that is sent to the driver.

77. I can also understand TfL's concern that we might have deliberately misled it in our 2014 correspondence, particularly given the emphasis that it placed on the importance of this issue in the letter of 8 April 2014 [EX1/B/5]. I can only repeat that nothing I have read or heard has suggested any such intention and, indeed, my review of the correspondence leads me to believe that our statements were based on insufficient engagement with the specific issue of sequencing, as opposed to the legal argument we were pursuing. In any event, on 2 July 2014, as we now know, TfL produced internal legal advice [EX1/D/5] on the acceptance of bookings issue, which concluded that the model was lawful and recommended to the TfL Board that ULL's licence should not be suspended or revoked. That advice was given on the basis of the various functions performed by ULL and not on the sequence in which various stages happen in the course of processing a booking. In a letter dated 18 July 2014 to all PHV operators [EX1/B/16], TfL confirmed that ULL's operating model, including specifically the way in which bookings were accepted and invited, was compliant with the 1998 Act [EX1/C/2].

The 2015 taximeter evidence

78. On 24 April 2015, in the Taximeter Case, ULL submitted evidence that included (by way of background) an explanation on the sequencing of acceptance of bookings [EX1/D/7/184-187]. That witness statement stated clearly that ULL accepts bookings before a driver has been found. That is not correct.
79. In the Decision Letter, TfL concludes that, as a result of this witness statement, materially false information was provided to the Court and that this was done knowingly or based on a misunderstanding of ULL's own systems.
80. I do accept that the information was wrong and that more effort should have been made to make it clear and accurate. However:
- (a) I do not accept TfL's view (as set out in the Decision Letter [EX1/B/62/277-278]; [EX1/D/47/800]) that this inaccuracy was material to the Taximeter Case, given that the information was provided only by way of background and was not relevant to that dispute, which related solely to the way the App calculated the fare; and
 - (b) I have no basis on which to conclude, nor any reason to believe, that it was knowingly incorrect.

Subsequent communications and explanations

81. In a witness statement dated 7 July 2016, Ms Bertram gave evidence in separate Employment Tribunal proceedings [EX1/D/16]. In her statement, Ms

Bertram stated that a booking is not accepted by ULL until a driver has confirmed that they are available and willing to take it. Specifically, Ms Bertram said:

ULL is responsible for accepting the booking made by a Passenger, as holder of the operating licence. However, at the point that a request is made by a Passenger, there is no obligation to provide a vehicle. As I explain below, the booking is accepted by ULL as the relevant private hire vehicle operator and allocated to the Driver. A booking is not accepted by ULL until a Driver has confirmed that they are available and willing to take it. Confirmation and acceptance then takes place by ULL almost simultaneously [EX1/D/16/299].

82. This is correct, as has been verified by Deloitte, who conducted a review of our systems on behalf of TfL in summer 2017 on behalf of TfL (the “Deloitte Review”) [EX1/D/30].
83. However, as well as being inconsistent with previous statements, it appeared to be inconsistent with a description that had been given by Uber Canada, unbeknown to ULL at the time, in evidence in a Toronto court case in 21 January 2015. In the Canadian evidence, the sequence for acceptance of bookings was described in the following way [EX1/D/6/105]:

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

That evidence was clear that bookings in Canada are accepted by drivers directly.

84. On 21 July 2016 [EX1/B/20], TfL wrote to ULL to seek an explanation for the inconsistency between our position as set out in the 2014 correspondence and Ms Bertram’s 2015 taximeter statement and the position as set out in the Canadian evidence.
85. It should not have taken a letter from TfL pointing out the inconsistencies to prompt us to clarify the discrepancies in our own explanations. I have found nothing to suggest that any deliberate decision was taken not to do so.
86. ULL’s letter of 4 August 2016 [EX1/B/21], which sought to explain relevant differences between Canada and the UK, which sought to explain relevant differences between Canada and the UK, was perhaps unhelpfully focused on the way in which TfL had become aware of the Canadian judgment (which we assumed was via a campaign by a group calling themselves “Campaign Against Unlawful Taxis In Our Nation Limited”) and on advocating our position on our model. Indeed, our response was written at a time when Uber was the subject of

constant campaigning against its business model, which led to an overly defensive attitude when we saw the arguments being taken up by our regulator.

87. On 13 September 2016, by which stage TfL had become aware of Ms Bertram's evidence in the Employment Tribunal, it wrote a further letter seeking an explanation of the inconsistencies between that evidence and the position set out in the 2014 correspondence and taximeter statement, as well as further information regarding Canada [EX1/B/24]. TfL's letter noted that we had responded on 4 August "by reference to associated regulatory requirements", and requested that we instead provide TfL with a "detailed step-by-step breakdown of each stage in the booking process" [EX1/B/24/74]. I understand TfL's apparent frustration, although it is important to note that, as I have explained, acceptance is a regulatory concept and so any explanation has to focus to some extent on the regulatory obligations at play rather than simply technical details of the system.
88. We clarified the position to TfL in our letter of 7 October 2016 [EX1/B/25], and the slide show we prepared for TfL in November 2016 [EX1/D/19/364], which is referred to at paragraph 18 of the Decision Letter, and which stated as follows:
- (a) *Rider makes a booking request for pickup using the Uber app to describe the preferred location*
 - (b) *Uber identifies the most appropriate driver for the booking request and system communicates the booking request via the app*
 - (c) *Driver confirms he/she is able to complete the booking by tapping the driver app*
 - (d) *Booking is accepted and recorded by ULL*
 - (e) *Details of the booking are sent to both the rider and driver*
 - (f) *Rider completes trip. The full booking record is stored by Uber London.*

This confirms the explanations given in the Employment Tribunal and since that date, and is very clear that ULL only accepts bookings after the driver has confirmed their availability and willingness to carry it out.

89. Apart from requesting a copy of the presentation in January 2017 [EX1/B/27] [EX1/B/26], TfL did not make any further comment on this issue until 16 May 2017, when it notified ULL that it was thinking of granting a short licence [EX1/B/32/126], but asked whether an IT systems architect could come and investigate ULL's systems (which is what it then did on 26 May 2017) [EX1/B/32/126].
90. On 26 May 2017, TfL wrote to ULL to notify us of their decision to grant the Short Licence, but explaining that TfL intended to continue to explore this issue, including through the investigations to be carried out by the IT systems architect [EX1/B/34/135]. On 13 June 2017, we confirmed that we wished to make arrangements for that investigation to take place [EX1/B/36/141]. On 30 June

2017, TfL wrote to us asking for certain information in advance of the visit by the IT systems architect [EX1/B/38/145-146].

91. On 4 July 2017 [EX1/B/39], we wrote to TfL on the practicalities of that visit, before responding more fully on 14 July 2017 [EX1/B/41] with answers to the specific questions. In paragraph 22 of the Decision Letter [EX1/B/62/267], TfL quotes from this letter, in which ULL said that the explanations it gave in 2014 were "*more generic*" and "*not focused upon the timing of acceptance*" as subsequent correspondence was and apologised for any confusion or difficulty caused by its "*lack of precision*". TfL says that ULL was "*clear and precise as to the chronology of the acceptance process: its answers did not lack precision; on the contrary they were precise, but false*" [EX1/B/62/267-268]. Similarly, in paragraph 25 [EX1/B/62/267], TfL says that our later explanation was not "*fuller*" and therefore more accurate or complete. I do not agree with TfL that the 2014 correspondence was clear and precise: it was, as I have explained above, regrettably inconsistent and confusing. It was also unclear because it used the word 'acceptance' in a manner that was ambiguous, quite possibly not referring consistently to the regulatory concept of acceptance or at least not doing so correctly.
92. On 24 July 2017, I took over responsibility for communicating with TfL about acceptance of bookings and, as this was the main focus at the time, the IT systems review [EX1/B/43]. As requested by TfL, we granted Deloitte open access to our system to conduct that review. On 7 August 2017, Deloitte produced the final version of their report [EX1/D/30]. This concluded that our explanations since early 2016 were accurate.
93. On 23 August 2017, TfL wrote to ULL [EX1/B/54/224], asking a number of questions about the information that we had previously provided on acceptance of bookings in our letter of 14 July 2017 [EX1/B/41].
94. I wrote the reply to that letter, which was sent on 2 September 2017 [EX1/B/58]. I was trying to respond as fully as possible on a large number of questions, and the letter took me a long time to write, given the number of questions TfL had asked us to answer within seven days. However, paragraphs 24 and 25 of the Decision Letter [EX1/B/62/268], note that this letter says that "*we are not saying anything "different" nor has the way bookings are accepted in London changed. Acceptance occurs once a driver has confirmed availability for the booking*", and say in response that "*We do not consider it is correct to say that nothing has changed in ULL's explanation*". I agree that the wording I used in this letter seems to say that I disputed that we had given conflicting explanations to TfL on the issue of when (in relation to driver confirmation) a booking is accepted. To be very clear, I accept that our explanations on this point have not been consistent. What I meant to convey was that ULL has always accepted bookings and that the technological essentials of the process by which that happens have not changed. Although I am not a software developer, and although many incremental changes have been made to the App over time, that remains my understanding.

95. The next letter that addressed acceptance of bookings was the Decision Letter [EX1/B/62].
96. I have sought to address above each of the criticisms made in the Decision Letter, and to make it clear that I agree with many of those criticisms. Frankly, we were not as helpful or clear as we should have been, which was partially due to the defensive mindset of ULL following a number of competitors' anti-Uber campaigns. This is not a justification; we should have done better. We are committed to doing better in future, and it is to this that I now turn.
97. Although a process of working out how to improve the ways in which ULL, and Uber more generally, operates internally and in engaging with its regulators and other stakeholders had started in earnest before the Decision Letter, the Decision Letter obviously further sharpened focus on that exercise and the urgency we needed to attach to it. I have thought very hard about what caused the shortcomings identified by TfL in the Decision Letter, and I set out my conclusions below. The key issue for me is to understand why ULL was reluctant in 2014 to give TfL the very full details and explanation of its systems that we ultimately gave to Deloitte when they came to review our systems in 2017. Had we given such information when TfL asked for it in February 2014 [EX1/B/3], we would probably have been much more likely to have resolved this issue at the time.
- (a) Putting myself in TfL's shoes, I can now see that it would have been more helpful if we had first given TfL all the facts about the way in which the App works, so that they could have drawn their own conclusions as to when regulatory acceptance occurs.
- (b) In 2014, Uber was still very much a fledgling technology "start-up" business. Such businesses are typically reticent about sharing commercially sensitive information and "trade secrets" with third parties, including regulators. Uber was no exception. At that stage, it would have been strongly counter-cultural to have allowed TfL unfettered access to its systems and the details of the innovative technology that underpins the App.
- (c) It appears from our correspondence with TfL that there was little consistent understanding within ULL as to how what was happening in the system fitted with the regulatory concept of "acceptance" of bookings. The correspondence suggests that we were, at least on some occasions, treating "acceptance" as the first step of the App receiving a request from a customer, which clearly happens before a driver is identified. That is not my understanding of what acceptance means in a regulatory sense. I am in no doubt that, if ULL had clarified at the time of the 2014 correspondence and 2015 exactly what it understood by "acceptance" as a regulatory concept, we could have provided TfL with much more useful and helpful information on this point.
- (d) We did not discuss with TfL in an open and transparent way the concept of acceptance. We missed an opportunity to seek out TfL's perspective

as regulator on what acceptance means, even though this was something it was uniquely positioned to explain and assist us with. If we had understood then what TfL's position was, again, we could have given more careful thought as to how that concept aligned with the functioning of the App.

98. I summarise below the steps that we are taking in this regard.

- (a) **Culture:** ULL must ensure that it gives TfL full, frank and clear information in a timely way on issues that concern TfL as regulator. The starting point for that is a culture in which the accuracy and openness of our communications with regulators is emphasised and valued, not the opposite. This is reflected in our new, global cultural norms. There has been a significant cultural shift within ULL in terms of the way it approaches discussions with its regulator. As I have explained at paragraph [60(a)] above, in our Cultural and Governance Submissions to TfL we commit to coming forward proactively with information on "*any issues in which TfL has an interest as a regulator*" [EX1/B/106/622]. This means putting ourselves in TfL's shoes - something that we have talked about a lot internally in recent months.
- (b) **Constructive engagement:** ULL needs to work more closely and openly with TfL to understand both TfL's concerns as regulator and its understanding of the regulatory regime that it is responsible for enforcing. One of our strategic priorities for 2018 is to "*be a trusted partner of regulators and communities.*" We describe this as meaning "*we have made it an express priority to work more closely, collaboratively and constructively with regulators in London and across the UK.*" [EX1/B/106/624]. The starting point in having a more collaborative relationship with TfL is our being willing to be open about the way we do things, which we are very much doing (and which I discuss in more detail below). However, we have gone further and have established a regulatory relationships team, led by Mr Jones, who will facilitate a reliable, constructive two-way communication channel with TfL on regulatory matters. This reflects a global focus within Uber on managing regulatory relationships effectively.
- (c) **Understanding our regulator:** We will aim to be more aware of the challenges that TfL has in carrying out its regulatory tasks, particularly in a rapidly evolving environment, and will foster a more collaborative relationship by going above and beyond simply following the rules. We are already required to notify TfL of any material changes to our operating model that may affect our regulatory compliance. However, we will go beyond this. As we said in one of our submissions to TfL [EX1/B/79], we will be proactive about engaging on changes in advance and as they are developed, as well as coming forward with information on broader issues, such as planned changes in which TfL may have a more general interest (for example, changes to the way in which we manage our "Ignition" programme). There has also been a recognition within ULL that we have

sometimes focused on seeking to persuade TfL at the expense of giving factual answers to factual questions, which would have been more helpful in allowing TfL to come to their own view. We have agreed that, in future, we will always provide factual responses to factual questions, in addition to any explanations as to the way in which we consider those facts to fit with the regulatory regime. We believe that this is the way we can be most helpful to TfL.

- (d) **Proactivity:** In our licensing submission to TfL [EX1/B/101] we make specific commitments to notify TfL of any changes to its operating model, with minimum notice periods depending on the likely significance of the issue to TfL. These commitments are underpinned by specific policies and protocols, such as our Change Management Policy [EX1/D/65] (which requires changes to our operations to consider expressly the impact on our regulatory obligations) [Jones1/32(b)] and our Product Launch Policy [EX1/D/66]. Both of these are discussed by Mr Jones at paragraph [Jones1/32(c)] in his statement. In addition, the sub-committee of the Board (the "Sub-Committee") with responsibility for matters related to ULL's licence has an express remit to oversee ULL's relationship and interaction with regulators.
- (e) **Quality assurance:** We are codifying and enhancing our internal processes to ensure systematically that those individuals with the most detailed understanding of the regulatory regime must be involved in formulating our responses to TfL queries. Mr Jones discusses at [Jones1/29-33], our appointment of Deloitte to assess our current policies and processes and identify areas in which they could be improved. This resulted in the codification of our processes in one user-friendly handbook entitled "Governance & Policy Framework" [EX1/D/53]. All requests from TfL that are not "standard" are referred to the ULL legal team and any response must be approved by the legal team. If the requests could impact on our licence, they are escalated to senior management. In practice this means such requests will be escalated to me and the other Directors [EX1/D/53/865]. In addition, the Sub-Committee has an express remit to review, monitor and decide on communications with regulators when those communications are referred to it by the licensed operations management committee ("LOMC"). This approach means that there will always be people involved in handling a request from TfL who have a detailed knowledge of the regulatory framework and our regulatory obligations and that significant communications are reviewed and approved by the most senior managers with fiduciary duties to ensure ULL's compliance.
- (f) **Regulatory understanding:** If ULL is to provide TfL with accurate information, we must be clear and consistent internally about our understanding of our regulatory obligations (to the extent that is possible given ambiguities and uncertainties in the legislation). We must also ensure that, when we communicate with TfL, the information we give is consistent with previous information and, if it is not, that we explain that

there has been a change and the reason for that change. The systematic involvement of the legal and regulatory team and senior management oversight will ensure that this is the case. We are also holding training sessions, and producing a "requirements codification" document, to help the wider business understand the regulatory context better, as discussed by Mr Jones in his statement at paragraphs [Jones1/33(a)] and [Jones1/64].

- (g) **Technical understanding:** Those communicating with TfL and those giving evidence in Court must understand the technical side of our operations and the way the App works. It is not clear to me that there was necessarily a deficiency in our understanding of how the App worked, but the explanations given as to its operation were inadequate. To address this we have put in place a number of measures. We will ensure that all regulatory communications containing technical information are even more thoroughly reviewed by those within ULL who have a good understanding of the technology. Where those individuals do not have sufficient knowledge they will seek more extensive input from engineers working for UTI.

- 99. I am confident that these changes will put us in a position where we can be far more open and helpful in our communications with TfL, but providing accurate and considered responses to their questions. However, we are also mindful that we cannot be complacent when it comes to communications with regulators and the Court [EX1/B/100/545].

G. GREYBALL

100. As I have noted above, on 3 March 2017, the *New York Times* published an article [EX1/D/22] that made allegations about the misuse of a function within the App, known as “greyball”. Greyball had initially been developed to implement legitimate changes to the App for certain users in a way that did not disrupt the view of the App seen by all users, but the article suggested that it had been used for the illegitimate purpose of evading regulatory and law enforcement.
101. Following the *New York Times* article, there was a series of letters between ULL and TfL on this subject, culminating in the Decision Letter, in which TfL criticised ULL for (in short) (i) failing to be proactive, open and transparent in its communications with TfL on matters related to greyball technology, (ii) 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, and (iii) for being wholly reactive in taking measures to address these issues. Those criticisms are now reflected in the provisional issues list [EX1/D/47].
102. Since the Decision Letter, I have carefully considered these criticisms, and I set out my analysis following that assessment in this section. In summary, I broadly accept the first and second criticisms. I also accept that some of the steps we have taken since the revelations may have been in one way or another reactive but I do not entirely agree that an ability and willingness to react, by making changes to address shortcomings, should be a cause for criticism.
103. I cannot remember whether I saw the *New York Times* article [EX1/D/22] when it was published on 3 March 2017. However, it is certainly true to say that, at the time, I did not foresee the impact that the issue was going to have on ULL, not least because it would not have occurred to me (rightly, as it proved) that greyball could have been misused in the UK.
104. Throughout the period leading up to the Decision Letter, I was not always fully involved in this matter. Decisions on the approach taken in our correspondence with TfL in relation to greyball were not in my full control. This was part of a wider global issue and although I was sometimes asked to comment on the specific content of the letters we were writing to TfL, the overall approach to regulatory communications was being coordinated through our global functional support teams. I was therefore neither aware of the full context or detail, nor was I the decision-maker when it came to the overall approach that we took to TfL’s enquiries.
105. Reading the correspondence between ULL and TfL on greyball afresh, I can fully appreciate why TfL was concerned that we did not proactively communicate with TfL after the *New York Times* article, and that it took a letter from TfL to ULL on 17 March 2017 [EX1/B/29] to start our engagement with it on this subject. That letter sought an explanation of whether greyball was capable of being used in London, the extent to which it had been used in London and elsewhere around the world, how it worked and what it was used for, and the extent to which it used personal data and how that use was compliant with the law.

106. ULL's response, dated 24 March 2017 [EX1/B/30] (and in which I had no involvement) explained that Uber was taking the issue very seriously, had announced an investigation into the matter, and had committed not to misuse greyball to evade regulatory or law enforcement in the future. The letter stated that, based on the investigation to date, Ms Bertram was confident that the investigation would not reveal any instances of greyball technology having been used for identifying and evading regulatory officials with responsibility for the regulation of Uber in London or anywhere else in the UK. This message remained unchanged throughout our correspondence. The letter further explained that Ms Bertram would immediately update TfL should the investigation uncover any findings that contradicted this, and enclosed a public announcement from Uber's then Chief Security Officer, Joe Sullivan, dated 9 March 2017 [EX1/D/24]. That announcement:

- (a) confirmed that Uber had started a review of the different ways the greyball technology had been used to date;
- (b) stated that Uber was "*expressly prohibiting its use to target action by local regulators going forward*", although it would take some time to configure Uber's systems to ensure this prohibition is fully enforced; and
- (c) noted that Uber would respond to requests for information from organisations who had sought it once Uber had finished its review.

However, although TfL's questions were broad and investigations into the issue had only just begun, there is no doubt that ULL's letter could have gone further. I accept that TfL's criticism in this regard is fair.

107. On 16 May 2017 [EX1/B/32/124], TfL wrote to ULL noting that it had heard nothing more from us since our letter of 24 March 2017 about greyball. The letter then asked five specific questions about the use of greyball in London, who was carrying out the investigation, and the scope and findings of the investigation. The letter also made it clear that, subject to ULL's response to the letter, and the outcome of the review into the IT underlying the booking system (i.e. the Deloitte Review), TfL would further consider the licence application. It was in this letter that TfL also notified us that it might consider issuing ULL with a short licence while these issues could be further considered.

108. Other than being interviewed by them as part of their investigation, and seeing the correspondence that they wrote to TfL about their investigation, I was not at any point involved in, or aware of the content of, Jenner & Block's investigation. As at May 2017, I had not yet been interviewed by them.

109. In paragraph 30 of the Decision Letter [EX1/B/62/269], TfL states that the 18 May 2017 letter [EX1/B/33] gave only "limited responses" to TfL's letter of 16 May 2017. Although I did not draft this letter, I did see it before it was sent. I accept that the letter was not as open or detailed as it could have been. For example, it would have been simple to tell TfL that the investigation was being carried out by Jenner & Block, a US based law firm who were selected for the task by UTI. We

should have recognised the importance that TfL attached the issue and responded accordingly.

110. On 26 May 2017, TfL responded to our 18 May 2017 letter [EX1/B/34]. TfL confirmed the grant of the Short Licence, a four-month PHV operator licence granted on the basis that we were fit and proper, and asked six further questions about the investigation into the use of greyball [EX1/B/34/132-133]. We responded with a holding letter on 13 June 2017, saying that we expected to be able to respond to their questions by the end of June [EX1/B/36].
111. On 30 June 2017, Jenner & Block wrote directly to TfL about the investigation that they had been conducting into the use of greyball in London [EX1/B/37]. The letter (which lists me as one of five named people that Jenner & Block had interviewed as part of that investigation) [EX1/B/37/143-144] says that Jenner & Block had confirmed that there was no evidence that Uber had used greyball technology, or any other method, to interfere with or impede regulatory enforcement activities in London. That is a finding that TfL has not disputed. It is also consistent with Ms Bertram's letter to TfL on 24 March 2017 [EX1/B/30] and with my own personal experience: from when I started at Uber until the time of the *New York Times* article (all of which was in the UK and Ireland), I am clear that I had never come across any suggestion that greyball might be used in such a way.
112. The Decision Letter is correct when it says, at paragraph 31 [EX1/B/62/269], that Jenner & Block gave no detail in this letter about the interviews that it had conducted with the five interviewees beyond the name and title of each interviewee and the conclusions reached, although I am not sure that TfL intends to suggest that an external law firm conducting such an investigation would be expected to divulge the content of interviews of this nature. In fact, the content of those interviews has never been divulged to me or to ULL. Moreover, TfL had not, in its letter of 26 May 2017 [EX1/B/34], asked for any details regarding the interviews other than the identities of the staff members who gave evidence.
113. In a letter of 20 July 2017 [EX1/B/42], TfL asked a number of new questions about greyball, including about the knowledge of senior officials in ULL in relation to potential greyball misuse outside the UK. Two responses were sent to this letter.
 - (a) On 4 August 2017, ULL responded to TfL [EX1/B/47] to confirm that Jenner & Block's investigation had identified some evidence that some of the senior officials involved in the ULL business who had a wider, international role had been party to communications regarding the misuse, or potential misuse, of greyball outside the UK. The letter did not name those individuals. More generally, the letter talked about certain changes that ULL proposed to make to its governance structures. I have already mentioned these changes above and they are discussed by Mr Jones in his witness statement at [Jones1/16-33]. Although I did not draft this letter, I agreed with the decision to deal in detail with the governance changes that we were making.

- (b) ULL's letter enclosed a further letter from Jenner & Block, also dated 4 August 2017 [EX1/B/46]. This letter went through each of the nine specific questions that TfL had asked in their letter of 20 July 2017 [EX1/B/46/187-194], including about senior officials within ULL's knowledge of, and involvement in, the potential misuse of greyball. I am now aware (having seen the key provided to TfL in Jenner & Block's letter of 17 August 2017 [EX1/B/52/217]) that "Person D" in the answer to question 8 of the letter was me. The letter confirmed that I did not have responsibility for markets outside the UK and Ireland, and that greyball had not been inappropriately used in either jurisdiction. "Person C" referred to in this letter was Ms Bertram and I note that, in relation to her, Jenner & Block concluded that she was:

aware of the use of greyball technology being contemplated in a manner that could have had the effect of interfering with or impeding regulatory enforcement in markets outside of the UK. On a handful of occasions in 2015, Person C was party to initial discussions to that effect. Person C did not apply greyball tags to riders' accounts in any market, did not instruct any other Uber employee to do so, and was not aware of the outcome of the above discussions and contemplations. Our investigation has not found any evidence that Person C authorised the use of Greyball technology in such a manner. [EX1/B/46/193]

114. The Decision Letter says at paragraph 37 [EX1/B/62/270] that ULL had used objectively vague language when describing Ms Bertram as having been party to initial discussions regarding the inappropriate use of greyball on "a handful of occasions". I agree the term "a handful of occasions" could be interpreted as vague but I do not have any reason to believe that the phrase was intended to obfuscate Ms Bertram's role.
115. It was not until late October 2017 that I first saw the four email threads to which, I understand, this refers [EX1/B/90]. I have now reviewed them thoroughly, and would make only one observation. In a single email, in response to a report of drivers in [REDACTED] being stopped by police (and a driver reportedly having his arm physically twisted to force him to log into the App so that police could look at it), Ms Bertram said:

If [the police were stopping cars by looking at the App for available cars or by booking a car] then I would definitely be more aggressive on closing down the view and/or greyballing. [EX1/A/7/16]

In my view, which is of course based solely on the emails I have now seen, this sentence could reasonably have been understood on its face to mean that Ms Bertram approved, at least in principle, the use of greyball against overly-aggressive law enforcement authorities.

116. TfL wrote to us on 22 August 2017 [EX1/B/53] in response to Jenner & Block's letter of 4 August 2017, asking for further information on persons E and C, as

well as about whether Jenner & Block would be preparing a report on their findings.

117. In its letter of 27 August 2017 [EX1/B/55], Jenner & Block informed TfL that their investigation had concluded that:
- (a) Ms Bertram was party to a small number of communications in 2015 in which Uber employees working in markets outside the UK and Ireland escalated concerns when drivers providing UberPOP (i.e. a peer-to peer ride-sharing service) were subject to what appeared to be attempts by competitors to entrap drivers and/or inappropriate action by local law enforcement, and one solution contemplated in those communications was the possible use of greyball technology [EX1/B/55/231]; and
 - (b) Rob van der Woude was a director of other Uber companies in [REDACTED] jurisdictions where it is possible (but not confirmed) that greyball was used inappropriately [EX1/B/55].
118. The Decision Letter is right when it says, at paragraph 41 [EX1/B/62/271], that this letter did not identify the [REDACTED] jurisdictions for which Ms Bertram was responsible, or for which Mr van der Woude was a director, where greyball may have been used inappropriately. Although this information has now been provided to TfL [EX1/B/72], I acknowledge that this happened later than I would have wanted had I been in TfL's shoes, even though I understand that the initial withholding of this information was motivated by a concern about prejudice to employees of other companies in the Uber group.
119. On 31 August 2017, ULL wrote a further letter to TfL [EX1/B/57], in which we answered the question in their 22 August 2017 letter [EX1/B/53] about the identity of the current directors of ULL. We confirmed that Ms Bertram was no longer a director of ULL, and would have no ongoing role in respect of our licensed activities by 19 September 2017, and that Mr Jones and I had been appointed as directors, with responsibility for the operating licence. We also updated TfL on our search for an independent non-executive director and our governance "refresh".
120. On 22 September 2017, we received the Decision Letter. Having reviewed the exchange of letters between March and the Decision Letter [EX1/B/29] [EX1/B/30] [EX1/B/32] [EX1/B/33] [EX1/B/34] [EX1/B/36] [EX1/B/42] [EX1/B/47] [EX1/B/51] [EX1/B/53], it is clear to me now that TfL was seeking to understand not only the misuse of greyball in the UK but any involvement of ULL senior management in the inappropriate use of greyball outside the UK, and that ULL should have been more proactive, open and transparent with TfL in response. 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.
121. On 1 November 2017, we wrote again to TfL regarding greyball [EX1/B/72]. This was the first letter that went out in my name. Before writing the letter, I discussed the approach that we should take to this with my co-director, Mr Jones. We agreed that the response should be as full and helpful as possible. It was

important to us that, under new leadership, the way in which ULL would communicate with TfL should be noticeably different. As a result, the letter contained a breakdown of all greyball tags that were found by the Jenner & Block investigations to have been applied in different parts of the UK, including London (none of which had been found to be illegitimate, as has always been reported to TfL), provided more information on the investigation, and disclosed Ms Bertram's emails on greyball that I referred to above. The letter also explained the roles of various people who were copied into the emails and employed by ULL at the time.

122. TfL responded to my letter on 14 November 2017 [EX1/B/74]. They asked us to address three specific points about (i) who had been copied into the disclosed emails; (ii) the knowledge of senior individuals with responsibility for Uber in London in relation to the use of greyball in any other jurisdiction; and (iii) whether we had reported the contemplation of the use of greyball in other jurisdictions to the appropriate authorities. I replied, answering those questions, on 17 November 2017 [EX1/B/77]. However, TfL had further questions, which they set out in a letter dated 28 November 2017 [EX1/B/86], to which I then replied on 5 December 2017 [EX1/B/89]. I am satisfied that we have now responded properly to TfL's questions on greyball.
123. On 21 December 2017, TfL wrote to us again [EX1/B/93A/482B]. Rather than continuing to ask detailed questions about knowledge of, and involvement in, greyball by individuals associated with ULL, the letter asked questions about the culture and governance structures within Uber and ULL. In particular, the letter noted that:

the issue of ULL's fitness to hold an operating licence is not confined to individuals working for that company alone when that company is clearly under the influence or control of those outside of it.

Uber has conceded itself that globally it needs to do better in terms of its strategic and cultural approach and you have referred briefly in your letter of 5 December about Greyball to a number of 'governance enhancements' currently planned at UTI board level.

We now need to see the substance behind the assurances Uber has given publicly about changes in corporate culture at Uber on a global level and how that impacts on the way Uber proposes it would operate in London going forward.

It is a matter for Uber as to what form this takes but what we would expect to see is a clear and detailed explanation from the CEO and Board of UTI setting out the corporate governance, management and other changes in control and decision making that have been or will be made not only at ULL but throughout the global corporate structure. It is for Uber to satisfy TfL that these changes in governance and controls around decision making globally and at a parent level flow through to the London company to the extent that it is now free of any improper influence, direction or control including but not limited to from those who

were responsible in Uber for the ... improper use of Greyball in other jurisdictions.

124. Our detailed response to this is in our culture and governance submission to TfL [EX1/B/106]. In that submission, we talked about ways in which we intended to ensure that ultimate responsibility for our licensed operations was vested in ULL [EX1/B/106/621-624]. A major element of this is the Board, Sub-Committee and LOMC structure, which is now fully operational [EX1/D/60]. Mr Jones provides further details on this in at [Jones1/16-19]. I also want to highlight the fact that we have now agreed with UTI a number of principles (as set out in our submissions to TfL) [EX1/B/106/622-623] setting out how we will work together in future. The principles confirm that UTI recognises that ULL is a licensed entity with obligations flowing from that and must ensure that ULL can meet those obligations. UTI has therefore committed to communicating to the UK business any material events affecting ULL in a timely manner. In addition, to ensure that these principles are fully embedded, our Chair, Ms Powers-Freeling was keen to set out these agreed principles in a more formalised way with robust mechanisms to support their fulfilment. In light of that we now have a new Compliance Protocol [EX1/D/54], which establishes the mechanisms that will ensure that ULL's autonomy as a regulated subsidiary is respected and supported and that communications between ULL and Uber's executive management are appropriate. The Compliance Protocol is discussed by Ms Powers-Freeling at [Powers-Freeling1/24]. As expressly recognised in the Compliance Protocol at [EX1/D/54/910], if the Board, individually or collectively, is not satisfied that we are able to fulfil our obligations, then our ultimate recourse is to inform TfL. While we hope it would never arise and we have developed discussion and escalation mechanisms to seek to avoid this, Ms Powers-Freeling [Powers-Freeling1/20] and Mr Jones [Jones1/28] both make it clear in their statements that they would take this step if it were necessary. As would I.
125. I also agree that cultural change at a global level within Uber is essential to preventing problems like the misuse of greyball from recurring. That is precisely what we are focused on achieving. Cultural changes, led from the very top of the global business, have meant that we have moved away from our approach of closely guarding information about our technology and business model, towards establishing strong and transparent relationships with regulators. That change is reflected in the policies and processes we have implemented (as described in our culture and governance submissions to TfL [EX1/B/106]). As the submission makes clear, we have made a number of changes at a global level to reflect the new cultural norms that we introduced in November 2017 [EX1/B/106/619-620]. One change is to adapt our performance management systems to incentivise teamwork and collaboration, rather than individual outcomes. For example, my personal performance will be measures against the ULL strategic priorities for 2018, which include being a trusted partner to regulators. We have also trained managers on their responsibility to act with transparency, honesty and integrity. I was involved in the development of this training and have attended similar training myself.

126. There are also some other policies, processes and mechanisms that support this cultural change, including the following.

- (a) Our global whistleblowing policy [EX1/D/86/1202] is intended to encourage employees from across our business to raise any concerns that they have about the way in which things are being done. ULL employees have been reminded about this policy on a number of occasions including, most recently, in an email from Mr Jones on 21 February 2018, in which he included a link to the policy and said the following about it:

In addition to being familiar with this I would also encourage any and everyone to speak up if they have any questions, concerns or ideas of how we can do business. I think it is essential that we get everyone to think critically about "delivering the spirit and the letter of the law" at every level. Speaking up might be flagging something to a peer, a manager or someone in the management team. Being able to challenge ourselves constructively if something doesn't seem quite right is really important to ensure we are the best we can be. [EX1/A/5]

This means that all Uber staff now know that if they encounter what they believe to be an attempt to provide incorrect information to a regulator, they would have to, and I believe would, report it.

- (b) Uber has also established an "Integrity Helpline" [EX1/A/1], which allows people working for Uber globally to raise with someone other than their manager or colleagues any concern that they have. It is hosted by a third party, who passes the report on to an Uber team (on an anonymised basis if that is what has been requested), who will then decide on appropriate next steps. As mentioned by Mr Jones in his statement at [Jones1/26], we have set out in our submissions to TfL clear principles governing the relationship between ULL and the Uber group, which safeguard ULL's regulatory autonomy [EX1/B/106].

127. In addition, we have taken a number of practical steps to address the issues raised in relation to greyball misuse.

- (a) On 7 April 2017, Uber implemented a new corporate policy [EX1/D/26] prohibiting the use of account tags to change vehicle views, and other similar technological techniques intended to thwart or interfere with enforcement action by any government employee engaging in official enforcement or oversight duties. As an aid to enforcement of this policy, Uber modified its systems to prompt employees seeking to apply such tags to receive pre-approval by a manager and legal before applying such tags. Violation of the policy is subject to disciplinary action, including termination. We have also made it clear [EX1/B/101/579] that ULL would accept an explicit licence condition to the effect that there must be a policy in force prohibiting the use of greyball for impeding or avoiding regulatory or law enforcement across Uber in all jurisdictions.

- (b) The two former directors identified in the Decision Letter [EX1/B/62/270] no longer have any operational responsibility for ULL. Ms Bertram ceased involvement in ULL's licensed business in September 2017 and announced that she was leaving Uber entirely in October 2017 (see paragraph [58] above). Although she is still under contract pending completion of her gardening leave (in March 2018), she is no longer actively working for Uber and has no systems or email access and no ongoing responsibility for any of ULL's licensed operations. Rob van der Woude (a tax manager) has not been a director of ULL since 18 August 2017; he has no responsibility for or involvement in ULL's operations.
128. It is, of course, true that some of these changes have been made in response to concerns raised by App users, the public, and regulators such as TfL. I do not think that an ability and willingness to react, by making changes to address shortcomings, should be a cause for criticism. Furthermore, I do not accept that the changes that we have made have been "entirely reactive". For example, in respect of those changes prompted by Deloitte's review of our corporate governance arrangements, which Mr Jones discusses in his statement at paragraph [29], their remit was not to focus on reacting to issues raised by TfL but 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.
129. As a result of all of these changes, I am clear that our systems and processes should ensure that TfL is informed proactively about issues of interest to it as a regulator and is given the necessary information in a timely way, and that ULL itself is better placed to identify and address issues that arise at an early stage.

H. DATA BREACH

130. While neither I nor anyone at ULL was involved in responding to a data breach that occurred in 2016, I understand the following from the UTI security team, much of which is also now in the public domain.
- (a) On 14 November 2016, the UTI security team received emails from an anonymous individual who claimed to have accessed Uber data and demanded payment of six figures.
 - (b) The UTI security team quickly determined that the person who had accessed the data, and someone working with him, had obtained access to certain archived copies of Uber databases and files located on Uber's private cloud storage environment on a third-party cloud-based service used by Uber called Amazon Web Services ("AWS"). The UTI security team also established that the people who had accessed the data had obtained the login credentials on a private Uber repository on "GitHub", which is a web-based third-party software development platform that was used by Uber software engineers at the time of the incident to store code for collaboration and development.
 - (c) The incident did not breach Uber corporate systems or infrastructure.
 - (d) To the best of Uber's knowledge, the unauthorised access began on 13 October 2016 and there was no further access after 15 November 2016. During that period, data relating to approximately 57 million passengers and drivers were illegally accessed, including the data of approximately 2.7 million passengers and drivers in the UK. This number is necessarily approximate because the information that Uber uses to assign a country code may not be the same as the country where a person actually lives.
 - (e) UTI did not report that breach to the relevant authorities and, having received assurances that the data had been destroyed and would not be used or disseminated, paid \$100,000 to the person who had accessed the data. This payment was made through HackerOne (www.hackerone.com), which UTI uses for its "bug bounty" program.
 - (f) In 2017, after UTI's new CEO, Dara Khosrowshahi, learned about the incident, he immediately directed that a thorough investigation of the breach be conducted into the circumstances surrounding the incident.
 - (g) On 21 November 2017, Uber notified the Dutch DPA of the data breach in accordance with the data breach notification requirements under Article 34a of the Dutch Data Protection Act. This notification was submitted by Uber BV, which, as noted above, is the data controller of all non-US driver and passenger data.
131. Once the initial forensic investigation was completed, on the evening of 21 November 2017, Mr Khosrowshahi issued a public statement about the breach, in which he explained the following [EX1/D/42].

- (a) Two individuals had inappropriately accessed data stored on AWS.
 - (b) The incident had not breached the company's systems and that there was no indication that any sensitive personal data (e.g. credit card numbers, location history or dates of birth) had been downloaded.
 - (c) The names and licence numbers of approximately 600,000 drivers had been downloaded. Nearly all of these drivers were in the USA.
 - (d) Some (non-sensitive) personal information of 57 million Uber users around the world had also been downloaded, including names and email addresses.
 - (e) There was no evidence of fraud or misuse tied to the incident and Uber was monitoring the affected accounts and had flagged them for additional fraud protection.
 - (f) Mr Khosrowshahi noted that was concerned about Uber's failure to notify affected individuals or regulators and, as a result of the way the breach was handled, two of the individuals who led the response to the incident in 2016 had left Uber (and, in fact, had been terminated effective 21 November 2017).
132. UTI then set about making a number of technological changes in light of the data breach, including the following.
- (a) UTI introduced additional monitoring of the 57 million accounts worldwide that were identified as affected by the incident and heightening the fraud protection for those accounts, despite (as noted above) there being no evidence that the data was compromised or evidence of fraud using the data.
 - (b) After the incident, UTI improved their security systems by strengthening the authentication and access processes for GitHub systems.
 - (c) Almost all access codes were moved to internal systems, significantly reducing the need to use external private repository systems such as GitHub.
133. In addition to terminating the employment of two of the people who had been involved in the inappropriate response to the breach, including the Chief Security Officer, UTI has subsequently hired Matt Olsen, a former general counsel of the U.S. National Security Agency and director of the U.S. National Counterterrorism Center, to help structure the security team and guide new processes going forward.
134. Although the revelations about the breach came after TfL's decision not to renew ULL's licence, TfL has raised concerns about the way the breach was handled and this has therefore been included in the provisional Issues List [EX1/D/47/802], although TfL has not yet confirmed whether it will seek to rely on this at the licence appeal hearing. TfL's criticisms are as follows.

- (a) The data breach itself is evidence that ULL is not fit and proper;
 - (b) ULL's decisions at the time of the breach in 2016 suggest it is not fit and proper to hold a licence. In particular, ULL decided:
 - (i) not to report the breach to the Information Commissioner;
 - (ii) not to inform those whose data was disclosed;
 - (iii) not to report the breach to TfL; and
 - (iv) instead to pay a large sum of money to those who had stolen the data.
135. There is no doubt that the data breach was highly regrettable, and it is right that steps have been taken to improve the way in which the data are stored and protected.
136. However, I do not accept that the data breach of itself shows that ULL is not fit and proper: the risk of data being accessed by unauthorised third parties is one faced by many businesses, and Uber is far from alone in suffering from such incidents.
137. That said, the failure to report the breach in 2016 was wrong. However, ULL was wholly unaware of the data breach and played no role in any of the decisions referred to by TfL in the Decision Letter. Indeed, once ULL was made aware of the breach in 2017, we responded in a way that shows that we are genuinely committed to transparency and proactivity.
138. I do, however, believe 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, and that is something we have addressed.
139. I explain below the relevant facts, as well as the steps we have taken and are taking in that regard. This is something about which TfL expresses concerns in its letter of 28 November 2017 [EX1/B/85].
140. Late on Friday 17 November 2017, our Head of Public Policy, Andrew Byrne was told by UTI that there had been some sort of data breach incident. At that stage, however, he had no understanding of the seriousness of the breach. I cannot remember whether I first heard about the data breach on the Friday or the following Monday, but I do know that Mr Byrne and I discussed it with TfL at a meeting that we had with them on Tuesday, 21 November 2017, Mr Byrne having given them some advance notice that we would like to discuss it with them when we met. However, at the time of the meeting we did not know the details about it. We committed to keep TfL informed.
141. The publication of Mr Khosrowshahi's blog on 21 November 2017 [EX1/D/42] was the first time that I was aware of the detail or scale of the breach. While I do

not accept TfL's criticism of ULL in 2016, I think that it is only right to address how ULL handled this matter once it became aware of it.

142. As I explained above, ULL had only received the most basic high-level information about a potential data breach by the time Mr Khosrowshahi's blog was published on the evening of 21 November 2017 [EX1/D/42]. Owing to the time difference, the news story first broke in the UK on the morning of the 22 November 2017. At that stage, I still did not know the number of people who had been affected by the breach. I spoke by telephone to Helen Chapman at TfL, who wanted to know how many people had been affected. It was my understanding that only one driver in the UK had been affected, based on my consultations at this time with colleagues in the US. I emailed Helen Chapman to tell her that one person in the UK had been affected [EX1/B/80].
143. A few hours later, it was explained to me that, in fact, the people in the US who were dealing with the data breach were classifying people whose data had been accessed into different categories and that this had led to an internal misunderstanding. In fact, 2.69 million people in the UK had been affected. I emailed Ms Chapman to let her know of this new information on the same day [EX1/B/80].
144. On 22 November 2017, Mr Byrne notified the Information Commissioner's Office ("ICO") about the data breach by telephone, who wrote to us on 24 November 2017 [EX1/B/83]. We have been in regular communication about the incident since. On 29 November 2017, for example, the ICO made a statement on the breach which confirmed that the breach is "*unlikely to pose a direct threat to citizens. However, it may make other scams, such as bogus emails or calls, appear more credible. People should continue to be vigilant ...*". [EX1/D/43/622]
145. ULL produced a number of updates for its App users, providing details of the breach, informing them of the low risk to their accounts, and sharing regulatory guidance [EX1/D/87/1204]. Uber is currently advising that there are no specific protective measures that App users should take [EX1/D/87/1204].
146. On 22 November, TfL wrote to me asking for further information about the data breach [EX1/B/81], and we were in email contact over the 22 and 23 November [EX1/B/82/418]. I told Ms Chapman that we were preparing a response to her letter, and would send it the following day, and also explained the approach we were taking to informing users [EX1/B/82/417-418]. On 24 November 2017, I sent a letter in response [EX1/B/84]. TfL responded expressing concern that we had not been able to obtain full details immediately [EX1/B/85]. ULL responded to TfL's subsequent questions more fully in a detailed letter [EX1/B/88].
147. As discussed at [124] above, we now have a Compliance Protocol, which has now been endorsed by the Board, our global CEO, COO and CLO, as well as our Vice-President for EMEA ([EX1/D/54] and [EX1/A/6]). As well as codifying the underlying principles and providing mechanisms for communication, consultation and escalation, the Compliance Protocol specifically identifies data breaches as

one of the matters of particular significance that should trigger these mechanisms [EX1/D/54/913].

148. I am satisfied that these changes will ensure that any future data breach will be notified to ULL in as timely a way as possible, with as much information as is feasible in these situations, enabling ULL in turn to notify its regulators promptly.

I. SAFETY

149. TfL says in the Decision Letter that it is concerned that ULL's approach to a number of safety-related issues demonstrates a lack of corporate responsibility [EX1/B/62/260]. I do not accept that. ULL takes safety very seriously. It is in our interests to offer passengers the safest service that we can: we could not hope to compete successfully in London if we could not demonstrate to Londoners how safe it is. For this reason, we are constantly thinking of safety improvements that we can make, and I have briefly described some examples of these below.
- (a) We announced on 16 February 2018, that we are developing a new dedicated support line for App users [EX1/D/57/931]. This is under development and will likely take the form of an App function that allows App users to click a button in the App to speak to an agent at any time. The function will incorporate a triage system, under which lower-level, non-urgent issues (such as queries about cancellation fees or promotional codes, which in December 2017 made up 58% of all complaints) will be directed to existing in-App messaging functions, but people contacting us for more serious reasons will speak to a telephone agent. This is still being developed, but we have communicated with TfL throughout the process [EX1/B/102], [EX1/B/108], [EX1/B/109], [EX1/B/110]. We set out our plans for this in my witness statement in judicial review proceedings against TfL on the precise nature of this function [EX1/D/55/919-920].
- (b) Although we have internal policies for dealing with reports of drivers being tired, TfL has raised concerns about the possibility that some drivers may drive for a longer period than is safe [EX1/B/38/146-147], [EX1/B/54/225-226]. This is something that we take very seriously, as is clear from both our responses [EX1/B/41/157-160][EX1/B/58/240-243]. In our November submission to TfL [EX1/B/78/369-370], we explained our future proposals on this issue. We sent TfL our risk assessment on 9 January 2018 [EX1/B/97], announced the measure on 15 January 2018 [EX1/D/48][EX1/D/49] and introduced it on 23 January 2018. Now, drivers receive a notification, via the App, when they are approaching, and then when they reach, the ten hours limit. They are then unable to access the App for six hours [EX1/D/48/803]. TfL has now suggested, in a policy document published on 15 February 2018 [EX1/D/56/928], that it is considering whether to impose a similar requirement on the PHV industry more generally.
- (c) TfL has raised concerns about the risks to security of potential account sharing or impersonation by drivers [EX1/B/38/150]. We have developed a potential way in which to perform real-time identification checks for drivers, using facial recognition technology and a password. This two-step process reflects the EU definition of "*strong customer authentication*" [EX1/C/7], which applies to authentication based on the use of two or more of knowledge (something the user knows e.g. a password), inherence (something the user is e.g. a biometric scan) and possession

(something the user possess e.g. a phone). We explained this proposal to TfL on this proposed solution on 17 November 2017 [EX1/B/78/377-379] and are currently consulting with the ICO on this proposal [EX1/B/107].

- (d) We recognise that taxi and private hire drivers play a big part in local communities and are often uniquely placed to spot warning signs and situations where a child or adult may be vulnerable. We have therefore worked with Barnardo's, the children charity, since February 2017 to ensure that we help drivers to recognise when children or vulnerable adults may be at risk from harm. We have done this by helping Barnardo's to develop an online safeguarding training designed specifically for taxi and private hire drivers, which teaches drivers how to recognise warning signs and report concerns. All drivers using the App now have the option of completing this training [EX1/D/29/481].
- (e) As Mr Jones explains at [Jones1/62], we are also undertaking a comprehensive review to ensure that historic safety-related incidents were dealt with appropriately.

150. In spite of this, the Decision Letter raises concerns about three safety-related issues. The first of these, which is about the reporting of criminal allegations, is dealt with by Mr Jones in his witness statement. There are two specific points that I want to make in relation to criminal reporting here.

- (a) In the Decision Letter, TfL says that it asked for further information about a sexual assault that led to a driver dismissal (and TfL notification) in May 2016, but that ULL had to be asked more than once for the further information [EX1/B/61/275]. At the time, we had a system called "zendesk", which received and monitored standard requests from TfL, such as requests for further information on PHV105 notifications. It was the role of specific people within ULL to monitor and respond to zendesk requests. However, having looked into this case since we received the Decision Letter, I have established that, rather than sending the request via the zendesk in the usual way, TfL sent this request to my individual email account on Monday 23 May 2016 [EX1/B/18A]. On that particular Monday, I had just returned from a holiday, and I must have missed the email in among all of the other emails that had been sent to me during my time away from the office. This meant that we had not responded by the time TfL followed up on their email on the afternoon of Friday 3 June 2016. [EX1/B/18A] However, we did respond to their follow-up request on the morning of Monday 6 June 2016 [EX1/B/18A]. While it would have been better if I had noticed, and taken steps to ensure that we responded to, the email from TfL when they sent it to my personal email address, I do not think that it is fair to suggest that this incident is evidence that we attach insufficient importance to the safety of our passengers or that we are not a responsible operator, as TfL do in the Decision Letter [EX1/B/61/275].

- (b) On 4 January 2018, I attended a meeting with TfL, along with Mr Byrne and others. At the meeting, we discussed the question of reporting of allegations of criminal behaviour to the Met. At the time of the meeting, we were still approaching this issue in line with our long-standing policy, but had sent them proposals, discussed in Mr Jones's statement at [Jones1/48], to report "designated offences". At the 4 January 2018 meeting, TfL were very clear that they wanted us to start our new process immediately.
151. The other two of TfL's criticisms relate to our use of "Push Doctor" and "Onfido", which are relevant to our "Ignition" programme ("Ignition"). This was something that we set up in August 2015 to help potential drivers with the private hire driver licensing requirements. Under the Ignition programme, prospective drivers are invited to come to one of our "Greenlight Hub" centres to learn about what is involved in driving with Uber, the process for obtaining a private hire driver's licence, and what TfL requires of PHV drivers. Where possible, we also help potential drivers to progress their applications. At the relevant time in 2016, to which TfL's criticisms of Push Doctor and Onfido chiefly relate, the day-to-day running of the Ignition programme in the UK was overseen by the London New Supply Operations Manager and the Rest of the UK ("RoUK") New Supply Operations Manager. Both of them reported to the then UK New Supply Operations Manager, who in return reported to the then Head of Supply. Where I refer to persons occupying these roles below, this is a reference to the persons who occupied these roles at the relevant time in 2016.
152. In the following sections, I describe ULL's approach to the issue in question, explain my response to TfL's criticisms, and set out the steps ULL has taken since that decision to make further improvements. Because I was not closely involved in the decisions to trial Push Doctor or to switch to Onfido, I have based some of the information below on discussions with colleagues in the Ignition team who were more closely involved. I have identified that information, and its source, throughout this section.
- Push Doctor**
153. For two months in 2016, our Ignition team suggested to prospective drivers that they could, if they wished, use an internet-based medical service called Push Doctor to obtain the necessary documentation to demonstrate their medical fitness to work as a PHV driver.
154. As I mentioned at paragraph [15(a)] above, to obtain a PHV driver's licence, an applicant must satisfy TfL that he or she is physically fit. Under the London Private Hire Vehicles (London PHV Driver's Licences) Regulations 2003 [EX1/C/3A], a driver must demonstrate this fitness either by:
- (a) holding a "Group 2 licence" (i.e. a licence to drive large lorries or buses), which are granted by the Driver and Vehicle Licensing Agency ("DVLA");
or

- (b) meeting the physical fitness standards that would be required in order to be granted a Group 2 licence (the "DVLA Group 2 Licence Standards").
155. If the driver wishes to satisfy this requirement using the second of these two routes, then he or she must produce a medical declaration, (a "Form TPH/204"). Two versions of this form, from 2013 and 2016 are included in the exhibit. [EX1/D/4] [EX1/D/18]
156. Three sections of the Form TPH/204 are required to be completed by a medical practitioner. The form itself suggests that this medical practitioner would "typically" be an applicant's GP.
- (a) Parts D and E of the Form TPH/204 [EX1/D/18/342-347] are concerned with whether the applicant has any history of certain specific medical conditions:
- (i) cardiovascular diseases, disorders and procedures, in relation to which the GP is required to furnish a current blood pressure reading;
 - (ii) musculoskeletal conditions, as part of which the doctor is required to state whether the applicant has any deformity or physical disability "*with special attention paid to the conditions of the arms, legs, hands and joints*" and whether it is "*likely to interfere with efficient discharge of his or her duties as a vocational driver*";
 - (iii) visual acuity, as part of which the doctor is required to provide the applicant's visual acuity readings per Snellen charts and any corrective prescriptions, unless the doctor does not have the equipment to carry out such tests, in which case the form asks the doctor to "*refer the applicant to an Ophthalmic Specialist or Optician*"; and
 - (iv) cardiac investigations, diabetic conditions, neurological disorders, psychiatric disorders, and recognised medical conditions that would preclude him or her from carrying guide dogs.
- (b) Part F is a declaration, to be completed by the medical professional, that they have seen the applicant's medical history. In the version in force from April 2013 until 2016 [EX1/D/4/347], which is the relevant period for these purposes, the wording of the form was as follows:
- I certify that, at the time of examination and completion of this medical form, I had possession of the applicant's complete medical history.*
157. When Ignition first started, ULL informed licence applicants that they should book a medical examination through their GP. ULL also provided prospective drivers with a link that they could use to download and print the relevant medical form for their GP to sign.

158. However I, along with management more generally, became aware in early 2016 that the process for obtaining a Form TPH/204 was both slow and expensive for drivers. I note from the document at [EX1/D/10] that it was not unusual for applicants to have to wait up to four weeks for an available appointment, which could then cost up to £150. I was also aware of issues with Form TPH/204 being filled out incorrectly because GPs were not familiar with the form, which caused further delays to the processing of applications.
159. In a bid to make the process of obtaining a Form TPH/204 [EX1/D/18] faster and cheaper for drivers, the Ignition team wanted to explore whether there was a more time and cost-effective way in which prospective drivers could satisfy TfL's physical fitness requirement. I want to be clear, however, that even though different options were explored, we never considered not telling applicants that they could see their own GP.
160. Two possibilities were considered.
161. We first considered whether doctors could be brought in to ULL's Ignition centres so that applicants could have an examination on the spot. However, it was ultimately decided that this would not save any time unless applicants had brought their medical records with them for their Ignition session, which they would be very unlikely to do.
162. We also considered virtual medical check facilities, whereby a doctor with access to the applicant's summary medical records conducted an examination via video-link. To explore this, the London New Supply Operations Manager had a conversation with the CEO of Push Doctor who was very interested in the idea of Push Doctor conducting medical assessments for PHV driver's licence applications. Push Doctor is an innovative technology company that connects patients with doctors who are registered with the General Medical Council and licensed to practice in the UK. The advantages of this service are that appointments are available almost immediately upon registration, there is no need to travel, appointments are not time-limited, and they cost £20 for the appointment and a further £15 for the medical certificate. [EX1/D/81] [EX1/D/82] [EX1/D/83] [EX1/D/84]
163. I understand from the London New Supply Operations Manager that he sent the version of Form TPH/204 that was then applicable [EX1/D/4] to Mr Ozagir, in order for Push Doctor to develop a proposal for how the medical fitness requirements might be met by a virtual examination through Push Doctor. In parallel with that work by Push Doctor, I understand from the London New Supply Operations Manager that he reviewed the DVLA Group 2 Standards and Form TPH/204 himself to ensure that there were no requirements, from a non-medical perspective, that couldn't clearly be met by a virtual examination. He noted in particular that the version of Form TPH/204 then applicable didn't require that the medical examination was conducted in person.
164. I understand from the London New Supply Operations Manager that Push Doctor then came back to him and to the RoUK New Supply Operations Manager with a proposal of how, from their perspective as licensed medical professionals, the

TPH/204 requirements could be met by their virtual examination service. I summarise below the key requirements and the way in which Push Doctor proposed to meet them.

- (a) The requirement for a blood pressure reading. Push Doctor developed a pack of items that applicants would take with them after an Ignition session for use during their Push Doctor assessment. One of the things in the pack was an electronic blood pressure monitor, which applicants would apply to their arm in front of the doctor during the examination via video-link, before showing the doctor the reading.
- (b) The requirement for eye sight tests. Another item in the pack was a sealed envelope containing "Snellen" eyesight charts along with a tape measure and a holder for the charts. During assessments, applicants would open the sealed envelope, place one of the charts on the holder, and stand a prescribed distance away (using the tape measure) before covering one eye at a time and reading out the letters to the doctor.
- (c) The requirement for an examination of whether the applicant has a physical disability or deformity "*with special attention paid to the conditions of the arms, legs, hands and joints*". [EX1/D/18/343] Push Doctor advised that doctors conducting PHV medical assessments would need do no more than observe an applicant's movement: it was not necessary, for example, for a doctor to touch an applicant in order to assess them.
- (d) Further, at the time, Push Doctor was intended to be used primarily by individuals rather than for professional medical checks. As such, the service needed to be developed and targeted to the specific PHV medical requirements. For example, it was important to confirm that the person attending the appointment was the same person that was applying for the licence. This was addressed by requiring doctors conducting examinations through Push Doctor to ask applicants to hold up to the camera his or her passport or driving licence, so that the doctor could be satisfied as to the identity of the patient. I would add that while it seems to me conceivable that a patient could attempt to circumvent this check through the use of a fraudulent document, or by sending someone else in their place, I cannot be sure that an in-person GP appointment would necessarily afford a greater level of identity check. Indeed, quite apart from my own personal experience of not needing to show ID when seeing a GP, I am aware of guidance from the Royal College of General Practitioners [EX1/D/1] which provides that, upon registering, "*Some GP practices will also ask to see proof of your identity, for example photo identity or driving licence*" [EX1/D/1/16], indicating that this is not mandatory.
- (e) TfL's Form TPH/204 at the time required the medical professional to sign a declaration that they had access to the applicant's "*full medical history*" [EX1/D/4/66] (also referred to as "*complete medical history*")

[EX1/D/4/73]). Push Doctor typically used summary medical records, which contain summary information on recent consultations, long-term conditions, medication and diagnoses, as opposed to all medical notes in relation to an individual, which could be up to 1,000 pages long, and are not stored on a centralised system. Push Doctor sent the Ignition team an example summary record demonstrating the type of information that a doctor would have access to through the Push Doctor service. This example summary record sets out health information in the following five categories:

- (i) "Problems", being active, significant past and minor past medical diagnoses and conditions;
- (ii) "Medication", summarising recent acute and repeat prescriptions, as well as details of allergies and general health status, such as weight, body mass index, blood pressure, alcohol and nicotine use;
- (iii) "Consultations", setting out summaries of the patient's last three consultations;
- (iv) "Investigations", listing dates and results of e.g. blood count tests and liver and thyroid function tests; and
- (v) "Referrals" to specialists.

Push Doctor advised that they considered that such records should, in most instances, be sufficient to allow the doctor to answer the questions in Form TPH/204 asked (see summarised at paragraph [156] above) and that, if more information was required, the doctors could ask the patient to request full records from their registered GP.

165. In light of this, I understand from the London New Supply Operations Manager and the RoUK New Supply Operations Manager that they felt comfortable with the proposal regarding summary records for the following reasons.

- (a) Having spoken to Push Doctor, as well as a provider of in-person medical assessments called Network Locum, and another digital health provider called Babylon Health, it became clear that the majority of GPs filling in a Form TPH/204 would typically use summary medical records anyway. [EX1/D/74/1061]
- (b) If the doctor conducting the assessment felt that it was necessary to review the applicant's full medical records, they could either:
 - (i) tell an applicant that he or she would like further information from the applicant's full medical records before completing the form; or
 - (ii) refuse to complete the form [EX1/D/68/1000]

- (1) If the doctor felt that the summary was not a "complete medical record" - because, for example, it indicated that the applicant had a condition about which the doctor needed more information - then he or she could also tick the "No" box on the form, and explain that the doctor had only seen a summary. It would then be up to TfL to accept or reject the Form TPH/204.
 - (2) The form used for a Group 2 licence does not require an applicant to furnish the medical professional with any medical records (i.e. not even summary records). Given that TfL accepted Group 2 licenses in support of PHV driver licence applications, it seemed unlikely that summary medical records would be insufficient.
166. In light of the above, the London New Supply Operations Manager, the RoUK New Supply Operations Manager and the UK New Supply Operations Manager at the time were reassured that medical professionals were satisfied that Form TPH/204 [EX1/D/4] could be completed by a doctor through a virtual assessment. In reliance on this confirmation from Push Doctor, ULL instigated an initial pilot of this bespoke service (which I understand to have involved only 256 applicants) between 20 May 2016 and 20 June 2016, and later a trial between 22 August 2016 and 23 September 2016. This worked as follows.
- (a) During Ignition sessions, ULL informed prospective drivers that using Push Doctor was one of a number of options for obtaining the necessary medical declaration. Although a majority of applicants still preferred to see their own GP - around 61% of total Ignition attendees during the month Push Doctor was trialed - for those that did choose this option, ULL assisted them to set up an account with Push Doctor and book an appointment.
 - (b) Where applicants chose to use Push Doctor, they were told by ULL to request their summary medical records from their GP and submit them to Push Doctor, who would make them available to the specific doctor conducting the assessment. I should note that, if a prospective driver did not have medical records in the UK, ULL recommended during Ignition sessions either that they tried to obtain their medical records from their home country or that they first register with a GP to have a fuller health consultation in person before using Push Doctor.
 - (c) If the Push Doctor doctor was satisfied that he or she could sign the form, it would be signed, stamped with a Push Doctor stamp and given to the applicant.
 - (d) Once the applicant had a signed Form TPH/204, he or she submitted it to TfL as part of the application for a PHV driver's licence.
167. During the trial of Push Doctor, between 22 August 2016 and 23 September 2016, ULL's records state that 468 prospective drivers underwent medical

examinations with Push Doctor, and that of those, 441 passed their medical examination and were sent a signed Form TPH/204 by Push Doctor.

168. Soon after the Ignition team started to tell potential drivers about the Push Doctor option, they discovered that TfL had rejected the medical certificates that had been provided through the Push Doctor service. As such, and as explained in the letter that we wrote to TfL on 14 July 2017 [EX1/B/41/169-170], we stopped recommending that our drivers use the service in September 2016, and reimbursed those drivers that had used Push Doctor for the costs involved in doing so. Those applicants who had had their medical examinations with Push Doctor had to undergo a medical examination in person in order to get the necessary documentation to support their application. We have never recommended video-link medical examinations since then.
169. TfL changed Form TPH/204 on 1 November 2016 to specify that medical examinations needed to be conducted in person, and with access to full medical records. [EX1/D/18/342]
170. TfL first wrote to us asking questions about the trial of Push Doctor on 30 June 2017. [EX1/B/38/150] Our response on 14 July 2017 [EX1/B/41/170] answered TfL's questions, although by reference to the August to September 2016 trial only, and explained that ULL had not used the service since. We said that it would be useful to understand TfL's concerns more fully. However, in their letter of 23 August 2017 [EX1/B/54/229], TfL simply thanked ULL for the information that we had provided, and said that they were considering it. That was the last that I had heard about Push Doctor until the Decision Letter itself [EX1/B/62].
171. TfL makes three criticisms of ULL's approach to Push Doctor [EX1/B/62/276]:
 - (a) ULL encouraged drivers to undergo medical assessments that were "*clearly and obviously unsatisfactory*";
 - (b) in so doing, demonstrated a lack of regard to public safety and security; and
 - (c) ULL only ceased promoting Push Doctor following intervention from TfL.
172. With hindsight, I do have a reservation about whether the eye tests were open to abuse by an applicant who was determined to cheat. However, it is also important to remember that the Push Doctor service connects applicants to NHS trained, fully-licensed doctors, who must in each case sign the form to verify the information that it contains [EX1/D/4]. As such, I do not accept that the medical assessments conducted by Push Doctor for PHV driver's licence applicants were "*clearly and obviously unsatisfactory*" [EX1/B/62/276].
173. I also do not accept that ULL lacked regard to safety and security when, during a short trial, it informed drivers about the availability of this service. This implies that we did not think carefully about the use of Push Doctor, which I think is wrong. As I have explained, the issue was considered from a regulatory

perspective and Push Doctor itself proposed a practical approach that was consistent with medical practitioners' obligations.

174. However, a key lesson learned is that 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. We have developed our processes and procedures since the Push Doctor trial, such that any similar change would now be more formally assessed. The Change Management Policy [EX1/D/65], described in Mr Jones's statement at [Jones1/32(b)], formally addresses potential regulatory issues arising from changes to ULL's approach to assisting licence applicants with the licensing process. This is by virtue of the fact that any changes to the Ignition program would be required to go through the change management process outlined in the Change Management Policy [EX1/D/65]. Where a change to the Ignition program is proposed, this requires a change proposal to be submitted to the legal team, who, as a first step, will assess the proposal from a regulatory compliance and risk perspective and determine whether the proposed change will be declined or approved and escalated to the LOMC or the Sub-Committee (as applicable) for consideration in accordance with the Change Management Policy.
175. It is correct that ULL only ceased telling applicants about Push Doctor once TfL started to reject certificates obtained using the service. In my view, there were two reasons for this.
- (a) First, we did not put ourselves in TfL's shoes and think about what would be helpful for them. Instead, we took a narrow view of what we needed to tell them and when.
 - (b) Secondly, I recognise that ULL more generally took a reactive approach in some instances to informing, and seeking views of, TfL about changes to its approach to assisting drivers with the PHV application process.
176. I am clear that ULL should have sought TfL's views on the Push Doctor service before trialling the service. As I have explained above, we have made changes to our culture and processes to reflect our commitment to TfL to communicate proactively with them, and I am clear that those would mean that TfL would in future have early visibility of this sort. Indeed, for several months now (and even before the Decision Letter), I have been giving TfL advance notice of changes to the App (see the email at [EX1/B/49] for one example).

Onfido

177. TfL's third concern in relation to safety is about ULL's involvement in obtaining background checks for prospective drivers, and specifically a partnership that ULL entered into with a background check service called Onfido.
178. Before I address TfL's specific concerns, it is worth giving a bit of detail on background checks. There are three different levels of criminal records certificates - basic, standard and enhanced. As I mentioned above, TfL requires that prospective applicants for a PHV driver's licence obtain an enhanced

criminal record certificate ("ECRC") from the Disclosure and Barring Service ("DBS"). This is not a licensing requirement prescribed by TfL in the 2003 Regulations, but something that TfL nevertheless specifies in its guidance that it requires. DBS is a public authority responsible for processing requests for statutory criminal record checks. ECRCs disclose an individual's full criminal history, including details of any spent convictions or cautions.

179. There are certain limits on who can request information on an individual's criminal history. Requests for an ECRC cannot be made by individuals, but only by people who fall into certain categories. These include licensing authorities, employers, and certain professional bodies. Such an organisation can register with DBS to make requests for ECRCs if its requirement is for more than 100 checks per year [EX1/D/51]. If an organisation's requirement is for fewer than 100 checks per year, it cannot register with the DBS and must submit requests via an intermediary (usually referred to as an "umbrella body"). An organisation may also choose to submit requests through an umbrella body even if it is registered with the DBS. The DBS process (and, of course, the ECRC itself) is the same, regardless of whether the application is submitted directly or through an umbrella body.
180. TfL does not itself apply for ECRCs: since 2011, it has contracted with GB Group, an identity management company registered with the DBS (i.e. an umbrella body), to do so on its behalf. In the case of a DBS check requested by GB Group on TfL's behalf in relation to a PHV driver's licence (which is the process followed by many drivers using the Uber App now and previously), that process involved (and indeed still involves) the following steps.
 - (a) Applicants entered various pieces of personal information, such as details of any name changes, full five year address history and national insurance number, onto the GB Group online portal, which is called OnlineDisclosures. Applicants were required to print an "ID Verification Form" once they had entered all their details.
 - (b) Under an agreement between the GB Group and the Post Office, applicants took their printed "ID Verification Form" and their original identification documents to the Post Office. DBS guidelines specify which documents can be used for this purpose [EX1/D/69]. Post Office staff took copies of the applicant's original identification documents, stamped them and uploaded them onto OnlineDisclosures. They also entered information from the identification documents onto the portal, such as the applicant's date of birth and nationality, and their passport number and date of issue.
 - (c) The Post Office verified that the original identification documents were current and valid, in accordance with the DBS requirements. Where the identification documents were insufficient or incorrect, such as where a document was out of date, the applicant would be prompted to supply further ID, but could not make any changes to the personal details supplied. If the Post Office accepted the identification documents, the

application would be sent back to GB Group who would then submit it to the DBS.

- (d) The Post Office also verified that the applicant's personal information entered on the application matched the identification documents. If an application was rejected for this reason, it would be returned to the applicant to amend his or her personal details. The applicant would then have to attend the Post Office a second time for their documents to be verified before the application was sent back to GB Group, and then to the DBS.

181. I understand from DBS guidance [EX1/D/51/838] that the following steps are thereafter taken by DBS in respect of every application they receive, and it is my understanding from the guidance that this is irrespective of the entity that submits the application to the DBS.

- (a) DBS checked the application for errors or omissions. If there were errors or omissions, the form was returned to GB Group. If there were no errors or omissions, the form was scanned onto the DBS system.
- (b) The applicant was checked by the police against the Police National Computer, a system that consists of several databases used by UK law enforcement, and the children's and adults' barred lists.
- (c) ECRCs, recording all data from the above databases, were sent to the applicant's local police authority by DBS, using secure, electronic means, for an additional check of police records.
- (d) All the information to be disclosed was included in a certificate, which was posted to the applicant at the home address they had given.
- (e) TfL accessed a copy of the ECRC via the OnlineDisclosures portal.

182. Towards the end of 2015, there started to be significant delays in the DBS process. This was in part due to the fact that it was taking a long time for the Metropolitan Police, as the local police authority in London, to search their records as part of the process described above. Indeed, in recognition of this, TfL announced in December 2015 that renewing applicants (that is, existing licensed PHV drivers who were applying for a licence renewal on the expiry of the term of their current licence) could continue to drive while their ECRC was renewed, provided that they met certain criteria [EX1/D/8].

183. Also in late 2015, the Ignition team began to look into ways in which we might be able to make the process of getting a PHV driver's licence easier for potential drivers. I understand from the UK New Supply Operations Manager and the London New Supply Operations Manager that, in addition to the delays caused by the police checking, the team was aware, albeit fairly anecdotally, that prospective drivers found the Post Office checking step inconvenient. There had also been a number of cases where problems with documents had not been picked up by the Post Office, so that applications were only rejected once they

got to DBS. This added further delay, as it meant that the applicant would have to go back to the beginning of the process, which is exactly what the Post Office check was intended to avoid.

184. One idea was to use a different umbrella body to submit applications for ECRCs. Members of the Ignition team looked at a number of different umbrella bodies that were registered with the DBS. One of the umbrella bodies that the Ignition team considered was Onfido, a technology company that specialised in background checks and identity verification [EX1/D/77], [EX1/D/76]. There were two aspects of the Onfido offering that made Onfido a particularly attractive option.

(a) Unlike the process using GB Group, where the only check before DBS received the application was performed by the Post Office, verification through Onfido was a two-step process.

(i) First, members of the Ignition team could check an applicant's original identification documents in person and upload scans of these documents to the Onfido portal.

(ii) Secondly, Onfido conducted a detailed second-level review to ensure that all details of the scanned identification documents that had been uploaded to the Onfido portal matched the personal details provided by the applicant, and that all identification documents were valid and sufficient in accordance with the DBS guidelines.

Although a two-step process may sound as though it would take longer, the extra check was viewed as advantageous because it made it more likely that problems would be spotted at the start of the process, thereby reducing delays later down the line when DBS found a mistake (a problem that we had found with the GB Group process).

(b) Onfido worked in this same way with a number of other companies who conduct criminal records checks.

185. In light of this and of the fact that (i) it is not a DBS requirement that document verification is carried out by the Post Office and that (ii) TfL has (and had at the time) a policy of accepting ECRCs applied for as part of other recruitment processes, provided that the ECRCs are dated within three months of their PHV driver's licence application [EX1/B/62/267], we undertook a very limited trial with Onfido. This trial involved six partner drivers and took place in December 2015.

186. As part of the trial, Onfido provided detailed training to ULL staff about the checking of identification documents in accordance with the DBS guidelines. I understand from the London New Supply Operations Manager that he has not been able to locate an example of the training that was given at the time to ULL, but I have seen a presentation to ULL staff from 17 March 2017, which I understand from the London Ignition Manager was a similar "refresher" training session provided by Onfido [EX1/D/25].

187. Slide 14 of this presentation makes clear that ULL employees must only accept "valid, current and original documents" and "no photocopies, or two of the same document type!". The presentation also says in an FAQ section that Onfido would "reopen" the application as part of their second-level verification if identity documents were not uploaded in the ULL offices. It specifies that "DBS requires that the employer verify all physical documents so that the applicant can be ID checked. As a result, we do not accept documents that have been uploaded outside of the Uber ignition sessions." [EX1/D/25/447] To give comfort to Onfido that all original documents had been physically checked in ULL's offices, scans of original documents were taken against a specific Uber branded mat.
188. To be clear, the only differences between Onfido's process and GB Group's process outlined above were as follows.
- (a) The Ignition team reviewed prospective drivers' identification documents in accordance with the training provided by Onfido. If they were happy that they were in order, they scanned them and uploaded them onto the Onfido portal. If the Ignition team member was not happy with the documents, then drivers were sent away to get appropriate documents. Drivers would then have to bring the new documents back, so that the photograph could be taken on the branded mat.
 - (b) Onfido conducted a second-level check, before submitting the application on to DBS.
 - (c) Once an ECRC had been generated, applicants had to provide it to TfL themselves, as TfL did not have access to the Onfido portal.
189. The Ignition team thereafter ran a further trial with Onfido in the beginning of 2016. I should note that, by this stage, the Ignition team was no longer reporting to me. However, I understand from the London New Supply Operations Manager that the Ignition team found the Onfido process quicker and more convenient because the submission portal was easier to use, the process did not require printing a document to take to the Post Office, and did not require attending the Post Office at all. Accordingly, in April 2016, ULL entered into a contract with Onfido [EX1/D/12].
190. In light of the positive experience using Onfido, I understand from the UK New Supply Operations Manager that he contacted GB Group in May 2016 to ask whether their process could be adapted in a similar way to the Onfido process so that initial checks were undertaken by the Ignition team, and then reviewed by GB Group. The UK New Supply Operations Manager has told me that this proposal came about because GB Group was TfL's preferred provider. GB Group were happy with the idea, although they felt that they needed TfL to agree to the change. Ultimately, TfL rejected the proposal [EX1/B/19], although it appears that they may have done so based on the misapprehension that no physical check of the documents would take place.
191. During our quarterly meeting with Helen Chapman, Peter Blake and Silka Kennedy-Todd of TfL on 7 September 2016, which I attended together with Mr

Byrne, TfL asked why we were using Onfido rather than GB Group. I explained that we found Onfido to be more reliable as they provide a second check of the data entered by applicants before submission to the DBS, and that we have had fewer issues as a result. TfL emphasised that they had concerns about whether the Onfido applications recognised that applicants are going to become PHV drivers as that influences the information police use for disclosure. I followed up on this query in an email to TfL dated 12 September 2016 [EX1/B/22], in which I explained that *"There are two key fields which are relevant to the applicant: Workforce and Position, and applicants processed by Uber have information entered as Workforce: 'Other', Position: 'Private Hire Driver'".* I also said that *"we are concerned that you have indicated this could be less robust or in some way lacking compared to other providers. As such, would you be able to explain exactly what you see as the shortcomings so that we can make any necessary changes please?"*. I did not receive a response to my email.

192. I discussed with TfL our use of Onfido again during our next quarterly meeting on 14 December 2016, during which we asked TfL again if they had concerns with the use of Onfido. We were told that they would get back to us but they never did.
193. In early 2017, TfL told ULL that it was investigating Onfido and that there would be delays to PHV driver's licence applications that relied on ECRCs obtained via Onfido. Soon afterwards, in April 2017, ULL stopped suggesting that licence applicants use Onfido.
194. In the issues list [EX1/D/47], there are three questions relating to ECRCs.
- (a) What identification checks were undertaken by ULL employees when prospective applicant drivers were seeking an ECRC through Onfido.
 - (b) Whether ULL employees' involvement in identification checks was unacceptable, because it demonstrated a lack of independence in the checking process.
 - (c) Whether, in light of the foregoing, ULL's approach demonstrated a lack of regard to the safety and security of passengers or the safety of the public.
195. The first of these does not seem to me to be particularly contentious. As I have indicated in paragraph [186] above, ULL employees were checking whether applicants had brought the right documents, and whether those documents matched with the information that applicants had uploaded onto the Onfido portal. In addition, and as I explained at [187], ULL employees were taking the additional precaution of physically verifying the documents. This is not something that the Post Office is required to check under the GB Group guidelines [EX/D/70], [EX/D/71].
196. In terms of the second question, I neither accept, and nor do I understand, the basis for TfL's position that ULL employees could not reliably conduct identification checks. That is for the following reasons.

- (a) TfL asserts in the Decision Letter that identification checks for an ECRC application should be carried out independently and that "*a prospective employer (or partner) cannot provide that independent checking service as it compromises the reliance upon which TfL as regulator can place on the results*". I do not understand the basis for this assertion. If there were a requirement for independence, then the DBS guidance could not provide, as it expressly does, for an employer to be involved in the process [EX1/D/51/833]. ULL does not employ drivers who use the App, but it is certainly no less independent than a prospective employer.
- (b) It is not a DBS requirement that document verification is carried out by the Post Office; this is mentioned nowhere in the DBS ID checking guidelines [EX1/D/51].
- (c) DBS guidance expressly provides that it is possible for anyone registered to request DBS checks to outsource verification of the applicant's identity, provided that the registered person must "*ensure the suitability of that person to conduct such checks*", "*provide appropriate training and guidance to that person*" [EX1/C/4] and comply with conditions notified by DBS to the registered person in writing.
- (d) The actual processes undertaken by DBS once the application is submitted are exactly the same irrespective of whether it is an employer or an umbrella body submitting the application for an ECRC.
- (e) Onfido is a highly reputable identity verification company. Onfido was recognised as a Technology Pioneer by the World Economic Forum in 2017 [EX1/D/89]. Onfido also won an award by the Mayor of London's new International Business Programme, which "*provides a bespoke mentoring scheme*" to fit companies' "*specific international growth ambitions*" [EX1/D/72], for Highest Investment in February 2017 [EX1/D/21].
- (f) In practice, ULL employees were rigorously trained on how to check documents, and to look for problems that the Post Office were not asked to look for by GB Group, such as whether documents might be forgeries.
- (g) There was no incentive for ULL not to conduct checks of identification documents reliably and appropriately. In addition to ULL's concern to ensure drivers provide as safe a service as possible as safe a service as possible, failure to do so could cause delays later on in the process or, worse still, allow an applicant to slip through the system and then go on to commit an offence. That is quite clearly not in ULL's interest. In light of that, we made real efforts to achieve a "zero return rate", which meant that no applications were flagged by Onfido or the DBS as having discrepancies. In addition to the training described above, we designed specific performance incentives for employees who processed the most ECRC checks with a zero return rate.

197. Turning to the final question, I do not accept that ULL lacked regard to the safety and security of passengers in fulfilling this role, nor do I understand the basis on which this is said to be a safety issue.
198. All of this said, it is clear to me that:
- (a) we did not have a systematic approach to identifying and assessing the issues involved in partnering with Onfido, including from TfL's perspective;
 - (b) we did not adequately document our consideration of the issue and the basis for our conclusions. It is striking that while it appears that ULL had contacted TfL in January 2016 regarding a proposal to use Onfido instead of GB Group and TfL had indicated verbally that this would be acceptable [EX1/D/10/212], we did not document that important discussion properly and it is therefore unclear what, if anything, we told TfL about our proposed involvement in the verification process or precisely what TfL's position was; and
 - (c) although I do not think that anyone involved deliberately sought to withhold information from TfL about the Onfido proposal, we did not recognise as we should have done the value of proactively seeking TfL's feedback, in particular in relation to our role in the document verification process.
199. In order to prevent this sort of situation from arising again, we need to be much better at identifying changes in approach that may be of interest or concern to TfL, and to communicate better and earlier with TfL. I have explained at paragraph [174] above, the changes that we are making to ensure that this happens.

J. ACCEPTANCE OF BOOKINGS – COMPLIANCE OF MODEL WITH 1998 ACT

200. TfL indicated in its Decision Letter that, although it formed no part of its licensing decision at that time, it was considering whether ULL's operating model complied with the statutory framework, in particular the requirements relating to the acceptance of bookings. [EX1/B/62/277-278] I have already explained at paragraphs [66] above the regulatory concept of "acceptance" and its regulatory significance.
201. In a separate letter dated 22 September 2017 [EX1/B/63], TfL set out a number of concerns that it had on this point. In a letter dated 28 September 2017, ULL sought clarification of TfL's position. [EX1/B/65] On 2 October 2017, TfL wrote to explain [EX1/B/66] that there had been a mistake with its letter of 22 September 2017 and enclosed a revised version of the letter, with references to the suggestion that ULL does not make provision for the acceptance of bookings removed. I refer in this statement to this revised version as the "AoB Letter". [EX1/B/67]
202. TfL's minded-to view was that ULL was not accepting bookings as operator because:
- (a) ULL does not accept bookings before assigning them to a driver;
 - (b) ULL's role is simply that of an "intermediary";
 - (c) drivers cancel bookings and that cancellation is then automatically processed by ULL;
 - (d) the booking process at Heathrow suggests that it is a driver's decision to accept or reject a booking that determines who the operator is; and
 - (e) ULL staff only play a limited role in configuring and managing the booking process.
203. ULL replied in detail on 20 October 2017 [EX1/B/68]. I will not repeat here the content of that letter, which is reflected in summary in paragraph [65] above: as I note there, we do not agree with TfL's minded-to conclusions or reasoning.
204. I do, however, want to address a couple of factual points in relation to TfL's reasoning. TfL states in the AoB letter [EX1/B/67/292] that a driver may cancel a booking after five minutes if the passenger does not present themselves for collection and in that situation the ULL system automatically cancels the booking. TfL also says "the ordinary course of events is that the decision whether or not to cancel a booking is taken by the driver." In fact:
- (a) a driver can indicate, at any time, that he or she no longer wishes to carry out a particular booking but if they do so more than five minutes after they arrived within the vicinity of the passenger pick-up point, then ULL automatically cancels the booking, because we think it is reasonable to assume that the passenger no longer wants a car;

(b) it is inaccurate to say that "the ordinary course of events" is that drivers get to decide whether or not the booking is cancelled (rather than ULL). Where a driver indicates he or she no longer wishes to carry out a trip either on the way to collecting the passenger while waiting for the passenger but before five minutes have elapsed since arriving, ULL automatically searches for another driver to fulfil the booking. It is also not the case that drivers will necessarily cancel after five minutes in the vicinity as it is often in their interests (having travelled to the pick-up point) to continue to wait for the passenger. In the last six months, fewer than 3.5% of all trips end up being cancelled because a driver decides (after waiting at least five minutes) not to wait any longer. To put that in context, figures for the same period show that (on average) 7.8% of all trips do not go ahead because the passenger decides to cancel.

205. In the provisional Issues List [EX1/D/47], TfL identified the following potential issues.

(a) Whether ULL is making provision for the invitation or acceptance of and/or accepting PHV bookings at its London operating centre.

(b) Whether ULL drivers are making provision for the invitation or acceptance of and/or accepting bookings.

(c) Whether, if ULL is not doing these regulated activities, and/or if drivers are doing them (without the necessary licences), ULL can be a fit and proper person (taking into account any agreement by ULL to change its operating model).

TfL stated in the provisional Issues List that it might invite the Court to consider these issues and that it will confirm its position when it serves its evidence on 26 March 2018. While I will not therefore deal with these issues exhaustively at this stage: as will be clear, ULL's position is that it, and not drivers using the App, accepts bookings, and makes provision for the invitation or acceptance of bookings. I believe it would, however, be helpful to update the Court on relevant developments since the Decision Letter.

206. Even though we do not agree with TfL's minded-to position on the compliance of our model, since September 2017, we have, in light of it, been contemplating a number of changes to the App to put the issue beyond doubt, and have been discussing openly with TfL exactly how we propose to re-design the App and technology to achieve these changes. [EX1/B/87]

207. In short, the main changes relate to (a) the confirmation of acceptance of the booking and (b) cancellation of bookings.

208. First, the passenger will receive confirmation that ULL has accepted the booking for regulatory purposes prior to a driver being identified to carry out the booking.

209. At present ULL's acceptance of a booking in accordance with the 1998 Act [EX1/C/2] is not communicated until after a driver has confirmed that he or she is

available and willing to carry out the trip. ULL does not agree with TfL's view that this suggests that it is the driver who is accepting the booking. Plenty of "traditional" minicab operators take the same approach: if a passenger phones up at a busy time, they will check to see if a driver is available and willing before confirming to the passenger that the booking is accepted. That is particularly likely to be true where the drivers available to the operator are, as in the case of ULL, self-employed because the operator cannot require a driver to take on a booking.

210. As part of these changes, we will reconfigure the App so that we will only offer trips within the London area (which includes Greater London, parts of the Home Counties and the main airports serving London) to drivers using the App who are licensed by TfL. This will resolve TfL's concern that the booking process at Heathrow (for example) means it is not clear that ULL is accepting bookings for the purposes of the 1998 Act [EX1/C/2]. By restricting which drivers are offered trips to those licensed by TfL, it becomes possible to communicate this acceptance immediately.
211. Secondly, we have changed our policy on cancellation. Under the new system, if the passenger cancels the booking, ULL will ask them to confirm the cancellation and then will cancel the booking. The actions of a driver will not have a bearing on when ULL cancels a booking. If a driver decides he or she no longer wishes to carry out the booking, the system will search for another driver. However, if the driver arrives in the vicinity of the pick-up point and the passenger has not shown up within eight minutes, ULL will automatically cancel the trip and the passenger and driver will be informed that ULL has done so. The driver will not be given the option of whether willingness to decide to continue to wait or not. The screen in the Passenger App will make it clear that it is ULL that has cancelled the booking and not the driver. The driver will still charge a cancellation fee.
212. TfL indicated in its letter of 21 December 2017 [EX1/B/93] that the changes we had proposed could in principle mean that bookings are accepted in accordance with the 1998 Act [EX1/C/2] provided that TfL could conduct a technical review to establish that the changes had been made as set out in our submissions and provided we updated our terms and conditions to reflect these changes. We replied on 9 January 2018 [EX1/B/96]. The technical review, conducted by Deloitte, took place in late January.
213. TfL confirmed in a meeting on 13 February 2018 that - subject to Deloitte confirming in due course that the changes work as proposed when system has gone live - TfL's position is that the changes to the operating model (as witnessed by Deloitte in test mode) put beyond doubt that ULL is accepting bookings in compliance with the 1998 Act [EX1/C/2], [EX1/B/111/658].
214. These changes are scheduled to go live on 14 March 2018. They have been announced to drivers [EX1/A/4], and we have agreed with TfL that Deloitte will attend our offices on 15 March 2018 to review the live system, so that they can confirm to TfL that it is operating in line with our proposal [EX1/B/111/657].

K. CONCLUSION

215. As I said at the outset of my statement, ULL does not doubt that it has made mistakes, nor that it needs to do better. However, I firmly believe that it is demonstrably fit and proper, and I respectfully ask the Court to find as such.

STATEMENT OF TRUTH

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

Signed: 

Dated: 26 FEB 2018

Appellant
T ELVIDGE
First
EX1
26 February 2018

IN THE WESTMINSTER MAGISTRATES' COURT

BETWEEN

UBER LONDON LIMITED

Appellant

- and -

TRANSPORT FOR LONDON

Respondent

FIRST WITNESS STATEMENT OF
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EX1
26 February 2018

IN THE WESTMINSTER MAGISTRATES' COURT

BETWEEN

UBER LONDON LIMITED

Appellant

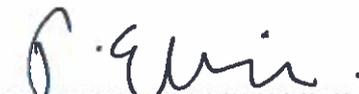
- and -

TRANSPORT FOR LONDON

Respondent

EXHIBIT "[EX1]"

This is to confirm that I have seen all of the documents referred to in the First Witness Statement of Thomas Elvidge dated 26 February 2018 in the Exhibit marked "[EX1]".


.....
Thomas Elvidge

Dated 26 FEB 2018