

BRIGHTON & HOVE STREAMLINE Ltd

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Brighton, Tuesday 3 October 2017

Jim Whitelegg
Licensing Manager
Hackney Carriage Office
Brighton & Hove City Council
Bartholomew House
Bartholomew Square
Brighton
BN1 1JE

To be delivered by hand

Dear Mr Whitelegg

Application to Renew Private Hire Operator's Licence by Uber Britannia Ltd

As you are aware from past correspondence, we, the undersigned, represent a long-established group of Taxi and Private Hire operators based in the city of Brighton and Hove.

We write now urging Brighton and Hove City Council ("BHCC") not to grant Uber Britannia Limited ("UBL") a renewed licence ("an Operator's Licence") under section 55 of the Local Government (Miscellaneous Provisions) Act 1976 ("the Act"). We consider that, for the reasons set out in more detail below, it is now more apparent than ever that UBL is not a fit a proper person to be awarded such a licence.

We have taken time, and incurred expense, by obtaining the assistance of counsel in drafting this letter. The intention is to summarise arguments which have, until now, been contained in a large number of items of correspondence and perhaps to introduce some further arguments which BHCC has not previously considered. We have codified all those arguments into a single letter and we hope that this assists BHCC and identifies the issues which we feel ought to be raised with UBL.

During the preparation of these submissions, Transport for London ("TfL") has decided that Uber London Limited ("ULL"), another company operating under the Uber brand, is not a fit and proper person to be granted a renewed Operator's Licence. For reasons which are set out below, the observations made by TfL in relation to ULL seem to us to apply equally to UBL and we can see no sensible basis for drawing a distinction between the two. As a result, we would encourage BHCC to read and consider the reasons given by TfL in its decision of 22 September 2017.

No Public Hearing

We wish to express our disappointment at the outset that BHCC has elected *not* to hold a Public Hearing for the determination of UBL's renewal application. The critical importance of this decision to UBL, to the wider Trade and to safety and welfare of the people of Brighton is plain and obvious, particularly in light of TfL's decision in respect of ULL. Due to the crystallisation of many issues both locally and nationwide, the need for arguments to be canvassed and, where appropriate, challenged in person, it is more vital even than when UBL first applied for an Operator's Licence in October 2015.

When the Public Hearing was held following UBL's first application for an Operator's Licence, the novel manner in which the service was being provided to customers and the lack of any real evidence about the mechanics of that service-provision resulted in a hearing which was characterised as much by uncertainty as it was by clarity. The understandable result was numerous undertakings were sought by BHCC and provided by UBL, and an Operator's Licence of only one year's duration was granted.

By the time UBL applied to renew its Operator's Licence in October 2016, it had only actually commenced effective operation a few weeks previously. Consequently, there was no real evidence to test the undertakings made publicly and no real customer or trade experience for BHCC to evaluate. In those circumstances, we can understand why the decision to renew UBL's Operator's Licence was then taken in private.

One year on, the position is very different indeed. Given what we have seen and reported to BHCC, coupled with TfL's recent determination, we consider that a decision by BHCC in October 2017 that UBL was a fit and proper person to hold an Operator's Licence would be an error of law and, very probably, irrational. There seems to us a very real risk that a decision to renew UBL's Operator's Licence might well be the subject of a judicial review, whether by us or by some other interested party. This would be a highly-regrettable position and one which neither the trade nor BHCC would welcome. The best way to avoid this outcome would be for all interested parties to be given an opportunity to set out their case in full in a public forum.

We understand that the decision not to grant a public meeting was based, in part, on the fact that no complaints have been received by members of the public (otherwise than those connected with the Trade). Respectfully, we consider this stance to be dangerously complacent. The very nature of Uber's business and service-delivery model means that customers may well be unaware that they have an opportunity to complain to BHCC about their experiences using the Uber App. Most customers recognise Uber to be a global brand and, unlike all established operators, one which has no obvious connection to the area in which the fare begins or ends. Indeed, in light of the matters set out here, there is a considerable possibility that a Brighton resident, using the Uber App to travel across the city, would do so in a vehicle licensed in London and driven by a driver similarly so licensed. That customer would, it seems to us, have no right to complain to BHCC, because the

operator in such a case would be ULL and the licensing authority would be TfL. Perversely, in such a circumstance, BHCC may well have no jurisdiction even to hear such a complaint.

Holding a well-advertised Public Meeting to consider UBL's application for a renewed Operator's Licence may well cause local residents to come forward with their personal experiences of using the Uber App, be those experiences good or bad. They could well inform BHCC's decision whether to renew UBL's Operator's Licence or not.

Why is Uber not a fit and proper person?

We wish to respectfully remind BHCC of the legal test which it is required to apply here. Although the provision is well known to those who will come to make this decision, it is important that it is applied with precision and, respectfully, we fear that a certain amount of elision and/or paraphrasing has crept into its application when issues involving Uber arise.

Section 55(1)(a) of the Act states (emphasis added):

(1) Subject to the provisions of this Part of this Act, a district council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operator's licence:

Provided that a district council shall not grant a licence unless they are satisfied

*(a) that the applicant is a fit and proper person **to hold an operator's licence.***

We emphasise these words because we consider that the approach BHCC took to the granting of UBL's operator's licence in 2015 failed adequately to take these words into account.

In our view, as a matter of language, a person or company might very well be a '*fit and proper person*' in the more general sense of the expression; whilst being a wholly unsuitable person to hold an Operator's Licence. By way of illustration, a person with a long-standing and exemplary record of service to the community, but who has no experience or expertise in the operation of Private Hire vehicle, might well fall into this category.

We would, therefore, urge BHCC properly to consider whether the applicant for this renewal, namely UBL, and not any other company or entity, meets this statutory test. In our view, when the statutory test is correctly applied to UBL, the following conclusions must be reached:

- (1) UBL performs none of the services associated with an operator of Private Hire vehicles. The services are performed either by the drivers themselves (unlawfully), by automated software or by a company or companies based overseas;

- (2) UBL can be shown to have breached undertakings given to BHCC when it first obtained its Operator's Licence in 2015;
- (3) UBL seeks an operator's licence from BHCC only to provide a fig-leaf to give credibility to a nationwide campaign of aggressive anti-competitive practices;
- (4) The proliferation of Uber-registered vehicles in Brighton and Hove is undermining the established regulatory framework put in place by BHCC to protect the safety and welfare of the public;
- (5) The business model by which UBL and the Uber brand operates makes them unwilling or unable to enforce any effective standards of discipline among their fleet of drivers.

We elaborate on the basis for each of those conclusions in the remainder of this letter.

Is UBL actually an operator of Private Hire Vehicles?

Section 46(1)(d) of the Act states:

Except as authorised by this Part of this Act

(d) no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence under section 55 of this Act

The term 'operate' in this context refers back to the definition in section 80:

"operate" means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle.

It follows, therefore, that if UBL is properly to be said to be a fit and proper person to hold an Operator's Licence, it ought to be able to demonstrate that it functions as an operator of Private Hire Vehicles. By this definition it must show that, in the course of its business, it makes provision for the invitation or acceptance of bookings for Private Hire vehicles.

We refer to the application form submitted by UBL in March 2015 for an Operator's Licence. This is the most recent application form available to us. The statutory declaration was signed by Ms Karen Walker and Mr Brent Callinicos. Both gave their addresses as being in California, USA. The head office of UBL was listed as an address in Manchester, albeit an address was provided in North Street as the location at which UBL would carry out its activities in Brighton. We do not know what infrastructure existed at the address on North Street or the office subsequently used by you by UBL at Grand Parade, however, we hope and expect that BHCC will investigate this as part of the assessment of UBL's renewal application.

UBL provided with its application a set of terms and conditions dated 8 December 2014 ("the 2014 T&Cs"). For the purposes of the 2014 T&Cs, 'Uber' is defined as being both UBL and another separate private company with a separate company number, namely ULL.

Part 1, Paragraph 2 of the 2014 T&Cs states (emphasis added):

"Pursuant to the Local Government Miscellaneous Provisions Act 1976 and any related government regulations pertaining to the operation of Private Hire Vehicles (together the "Regulations"), a private hire booking made by you must be accepted by a person that holds a relevant PHV operator's licence. Uber is the holder of such a PHV operator licence in each of the jurisdictions in which it operates, and as set out in paragraph 3 below accepts at its registered address and/or operations centre private hire bookings made by you using the Uber App ("Bookings")."

The paragraph 3 to which reference is there made states:

"Uber accepts Bookings acting as disclosed agent for the Transportation Provider (as principal). Such acceptance by Uber as agent for the Transportation Provider gives rise to a contract for the provision to you of transportation services between you and the Transportation Provider...For the avoidance of doubt: Uber does not itself provide transportation services, and Uber is not a Transportation Provider. Uber acts as intermediary between you and the Transportation Provider...Uber accepts your booking as agent for the Transportation Provider, but is not a party to that contract."

The Transportation Providers referred to in that paragraph are, it is to be remembered, the Uber-registered drivers. It seems highly unlikely that any drivers have Operator's Licences yet whatever steps UBL says it takes, it purports to do so as their agent. On UBL's own description of its working practices, it takes no active steps in its own capacity, but merely acts as an intermediary and agent of its drivers. In light of this, it is hard to fathom on what basis UBL asserted in 2015 and asserts today that it is an operator of Private Hire Vehicles.

The artificiality of the 2014 T&Cs is drawn into focus by considering the evidence filed by Ms Joanna Bertram¹, the Regional General Manager of ULL in the Central London Employment Tribunal hearing of *Aslam v Uber Britannia Limited (and ors)*² at paragraph [60]:

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

¹ <http://www.uphd.org/wp-content/uploads/2016/11/Jo-Bertram-witness-statement.pdf>

² [2017] I.R.L.R. 4

With respect, this evidence demonstrates the linguistic dexterity required to shoe-horn what happens in practice into the printed Terms and Conditions under which UBL and ULL operate. The only discretionary, indeed the only cerebral, decision taken in respect of the customer's request is taken by the driver of the vehicle swiping his smartphone screen. Once that decision is taken, the software *'accepts and confirms'* the booking both simultaneously and automatically. A process which involves no discretion or indeed any human input cannot, in our view, amount to acting as an operator of Private Hire Vehicles. If such a limited action could be so described, it is difficult to envisage how or why Parliament would have intended it to be a regulated activity.

It would also appear to be wholly contrary to BHCC's own views on the role of a Private Hire Vehicle Operator. In a report dated 19 October 2015, when UBL first applied for an Operator's Licence, the Director of Public Health, Jean Cranford said at paragraphs 3.2 - 3.5:

"So, in simple terms, a private hire operator is the person who takes a booking for a private hire vehicle and then dispatches a PHV driven by a licenced [sic] private hire driver (PHD) to fulfil that booking...

However, the role goes far beyond simply taking bookings and despatching vehicles. In the course of making a booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information...

It is therefore vital that PHOs are as trustworthy and reliable as a driver, notwithstanding their slightly remote role."

We entirely endorse these comments and say that they highlight how inappropriate it is, as a matter of language, to describe UBL as an operator of Private Hire Vehicles on the basis of UBL's own evidence and Terms and Conditions.

Furthermore, due to the manner in which the Uber brand operates, in particular, its interpretation of the decision in *Adur D.C. v Fry*³, we do not think it is credible for UBL to assert that it has any direct involvement at all in the acceptance and confirmation of bookings.

It is now apparent that, since UBL started operations in Brighton and Hove, when a customer opened the Uber App in the city and requested a fare, that request was sent to a number of nearby vehicles by the Uber App who could elect whether or not to take the fare. Some of those vehicles were registered in Brighton and Hove under UBL's Operator's Licence granted by BHCC. Others were registered in London under ULL's Operator's Licence granted by TfL. Whether the fare was accepted by a Brighton driver or a London driver was determined by factors such as the proximity of the drivers to the customer and the personal willingness of each driver to accept the fare.

³ [1997] R.T.R. 257

If both Ms Bertram and the published Terms and Conditions of ULL and UBL are to be believed, both ULL and UBL simultaneously sent the one customer's request out to its drivers and, depending upon which driver communicates its acceptance to its related 'operator' first, either UBL or ULL instantaneously accepts and confirms the booking.

With respect this is plainly an entirely artificial construct. In fact, it is clear that the software, in the form of the Uber App, sends the request out both to London registered drivers and Brighton registered drivers, one of whom accepts the request. The Uber App is, according to the Terms and Conditions (Part 2, Paragraph 1), operated by Uber B.V. a company established in the Netherlands. Neither UBL nor ULL has anything to do with the customer's request, at least until such time as the request is accepted by the driver.

Once the reality of the position is set out, it is apparent that the only credible candidates to be operators in relation to use of the Uber App are Uber B.V. and the individual drivers. Neither have applied to BHCC for an operator's licence, only UBL.

The breached undertakings

We wish to remind BHCC of the terms of the Decision Notice of 19 October 2015, pursuant to which UBL's first operator's licence was granted. This Decision Notice was produced following a public meeting at which various representations were made. These representations elicited certain undertakings from UBL and we consider that UBL has failed to meet those undertakings.

At paragraph 7.39 of the Decision Notice, the following comment is made:

"Mr Byrne confirmed in response to questions by Councillor Marsh, the Chair, that Uber would have a dedicated office in Brighton & Hove and that all bookings made in the city would be processed there."

Based on the business model described above, we have great difficulty understanding how this undertaking can have been met. As we have explained, an individual requesting a vehicle using his Uber App in Brighton may connect to a UBL vehicle registered in Brighton (or elsewhere) or a ULL vehicle registered in London. If, by chance, the driver who accepts the booking is registered in London, it would be a clear breach of the principle of the unity of licences if that booking was processed at UBL's office in Brighton. If UBL's position is that such a booking was 'made' in London, we suspect that Councillor Marsh would consider that she received a distinctly misleading answer to her question.

Furthermore, by a letter dated 11 November 2016, we note that Simon Court, Senior Lawyer for BHCC wrote to our then solicitors (referring to the renewal granted in 2016) saying:

"The licence is subject to meeting the requirements set out in the Blue Book, and thus there is a requirement to use only drivers and vehicles licensed by Brighton & Hove City Council. Uber were reminded of their commitment to use Brighton & Hove City Council licensed drivers."

This is consistent with paragraphs 7.34 and 7.64 of the Decision Notice from the previous year. Both Mr Court and the Decision Notice there draw upon an express undertaking given by the legal team who represented UBL at the public hearing in 2015 in the following terms:

"Should Uber be granted a Private Hire Operator's Licence here in the City, they will only use drivers and vehicles licensed by Brighton and Hove City Council."

Even if 'Uber' in this context is taken to mean UBL, it is difficult to see how the undertaking can be successfully complied with within the business model set out above. We are aware that UBL has obtained licences from a range of other licensing authorities, in addition to the licence ULL has obtained from TfL.

By way of illustration, it is apparent that UBL has been granted Operator's Licences by authorities as far afield as Oldham and York. We do not understand how one company can undertake to BHCC that it will use only Brighton & Hove registered drivers when applying for a BHCC licence and also (presumably) represent to York that it will only use York registered drivers when applying to York for a licence.

This is plainly a nonsense and inconsistent with its other undertaking that bookings made in the city would be processed there. Either the Uber model can distinguish which bookings are made in which locality or it cannot.

In our view, a company cannot sensibly be described as a fit and proper person if it gives undertakings to a licensing authority which it knows it is simply incapable of meeting.

Anti-competitive practices

When considering UBL's application to renew its Operator's Licence, it is important to remember the following matters:

1. UBL has Operator's Licences from a number of licensing authorities nationwide;
2. ULL is seeking to appeal TfL's decision not to renew its Operator's Licence in London; and
3. Both UBL and ULL maintain that the effect of the decision in *Adur D.C. v Fry*⁴ is that an Uber-registered vehicle and driver (whether registered in London through ULL or elsewhere through UBL), can pick up and drop off a passenger anywhere in the country.

⁴ *ibid*

In light of these positions, one might wonder why UBL seeks to renew its BHCC Operator's Licence at all. As matters stand, Uber asserts that its vehicles can accept fares in Brighton and Hove, whether or not BHCC renews its Operator's Licence, albeit TfL's recent decision plainly impairs this.

Nevertheless, a large number of drivers and vehicles are currently licensed by BHCC for Private Hire. Most do not work for UBL but work for the companies of the undersigned. In our view, the primary, possibly the only, motivation behind UBL seeking an Operator's Licence from BHCC is to entice drivers to switch from our companies to Uber.

We believe this is happening nationwide as the global Uber brand and its UK-based companies seek to target the small local operators, to poach their staff and ultimately to drive them out of the market. This is plainly not in the interests of the residents of Brighton and Hove. If BHCC renews UBL's Operator's Licence, it would, in our view, risk being an unwitting facilitator of this aggressive monopolistic conduct.

It goes without saying, in our view, that a company which brazenly seeks to exert monopoly power to drive competitors out of the market is not a fit and proper person to hold an Operator's Licence.

The impact on the effectiveness and relevance of the Blue Book

For some years, residents of Brighton and Hove have enjoyed a superb standard of service when using Private Hire Vehicles. We are very happy to credit BHCC with this and the clear and high standards set in the Blue Book.

By way of illustration, BHCC has imposed upon the undersigned operators a requirement that a proportion of our vehicles are wheelchair-accessible and has imposed a requirement of all Hackney and Private Hire Vehicles that CCTV must be installed in the vehicle.

These requirements are beneficial to the public but are very costly for us. When UBL sought an Operator's Licence in 2015, however, these requirements were effectively dispensed with because Uber's business model made them impossible to be achieved. Not only are we aggrieved that this creates a playing-field which is far from level, we consider it to be a regression, as far as the standards of service provided to residents.

UBL seeks to offer Private Hire Vehicles to members of the public in Brighton and Hove which fail to meet the standards those customers have come to expect. Furthermore, having acquired its Operator's Licence back in 2015, UBL has taken it upon itself to make representations to the Brighton and Hove Hackney Carriage and Private Hire Forum that these established regulatory standards are unnecessary and ought to be reduced or removed. (Please refer to the Minutes of the Taxi Forum dated 2 May 2017.)

When applying the test under section 55 of the Act, BHCC must take a local view, with reference to the circumstances which exist in Brighton and Hove. When one considers the established Private Hire market in the city, it is apparent, in our view, that a company which cannot meet the local standards is not a fit and proper person to hold an Operator's Licence in this locality.

We also fail to understand how a company which, shortly after acquiring an Operator's Licence, lobbies for the diminution of safety standards within the industry can be said to be a fit and proper person to hold such a licence. UBL plainly does not prioritise the safety and welfare of its customers in the way BHCC is entitled to expect of its Private Hire Operators.

The enforcement of standards

In light of the evidence which has come to light now Uber-registered vehicles have been operating in the UK for some time, it is abundantly clear that the observations made above about the business model under which UBL and ULL operate is having a significant impact upon public safety.

In an email dated 11 September 2017, Mr Court wrote to the undersigned as follows:

"So the advice that I have given is that we assess our own local issues and not rely upon newspaper articles of unproven allegations and other assertions. The hard facts are that in relation to Uber as an operator we have had no local complaints other than from the trade or those related to the trade."

In light of the matters set out above, and the clear overlap between the actions of UBL and ULL we consider this advice to be, with respect, quite extraordinary. We wish to make clear that we do not encourage BHCC to determine UBL's renewal application based on unproven newspaper rumours. What we strongly encourage BHCC to do, however, is to consider what TfL has itself determined is the impact of ULL's business model on passenger safety.

The published decision says as follows:

TfL considers that Uber's approach and conduct demonstrate a lack of corporate responsibility in relation to a number of issues which have potential public safety and security implications. These include:

- Its approach to reporting serious criminal offences.*
- Its approach to how medical certificates for drivers are obtained.*
- Its approach to how Enhanced Disclosure and Barring Service (DBS) checks are obtained.*
- Its approach to explaining the use of Greyball in London - software that could be used to block regulatory bodies from gaining full access to the app and prevent officials from undertaking regulatory or law enforcement duties.*

There is no proper basis for distinguishing the manner in which Uber services are provided by ULL in London from the manner in which they are provided by UBL in Brighton and elsewhere. If BHCC purported to confine its enquiry on this application to proven allegations made in Brighton about Brighton-licensed Uber drivers, it would not only be fettering its discretion unlawfully, it would be displaying an alarming complacency towards the safety and welfare of its residents.

TfL has not, to date, elaborated upon those categories of criticism. With respect, however, they seem to us to be a clear by-product of a business model in which a company is created in order to obtain a licence to perform a regulated activity, whilst that company simultaneously disclaims any liability for the way in which that activity is carried out. We refer in this vain to Part 2, Paragraph 8 of the 2014 T&Cs, those which were in force at the time UBL was first granted an Operator's Licence:

"The quality of the transportation services requested through the use of the Uber App and/or the Services is entirely the responsibility of the Transportation Provider who provides such transportation services to you. Uber under no circumstance accepts liability in connection with and/or arising from the transportation services provided by the Transportation Provider or any acts, actions, behaviour, conduct and/or negligence on the part of the Transportation Provider or its employees. Any complaints about the transportation services provided by the Transportation Provider should be submitted to the Transportation Provider."

The 2014 T&Cs made plain that UBL would, in effect, take no responsibility whatsoever for the actions of its drivers and any complaints were to be made to the driver himself. We fail to understand how this position was ever compatible with paragraph 76 of the Blue Book which states:

76. The standard of service

The operator shall provide a prompt, efficient and reliable service to members of the public at all reasonable times, and for this purpose shall in particular;

76.1 ensure that when a private hire vehicle has been booked that the driver attends at the appointed time and place punctually, unless delayed or prevented by sufficient cause.

76.2 keep clean, adequately heated, ventilated and lit premises which the operator provides and to which the public have access, whether for the purpose of booking or waiting.

76.3 ensure that any waiting area provided has adequate seating facilities.

76.4 keep a summary of all complaints received regarding service provided or about drivers

76.5 Must provide an equal service for differently abled passengers

76.6 Any operator operating more than 100 vehicles must ensure that 20% of their fleet is Wheelchair Accessible.

UBL's Terms and Conditions have been amended since the Operator's Licence was first granted and Part 2, Paragraph 8 no longer exists. Nevertheless, we consider that the new Part 2, Paragraph 5 is similarly at odds with the Blue Book. It states (in block capitals):

"The services are provided "as is" and "as available." Uber disclaims all representations and warranties, express, implied or statutory, not expressly set out in these terms, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement. In addition, Uber makes no representation, warranty, or guarantee regarding the reliability, timeliness, quality, suitability or availability of the services or any services or goods requested through the use of the services, or that the services will be uninterrupted or error-free. Uber does not guarantee the quality, suitability, safety or ability of third party providers. You agree that the entire risk arising out of your use of the services, and any service or good requested in connection therewith, remains solely with you, to the maximum extent permitted under applicable law."

As a result, we say that one need not look to newspaper articles or rumour to discover that UBL's business model represents a threat to passenger safety. Such has already been determined by the largest licensing authority in the country and such is immediately apparent from a perusal of its past and present Terms and Conditions.

UBL is a company which invites BHCC to conclude that it is a fit and proper person to hold an Operator's Licence, yet seeks simultaneously to assert that it has no interest whatsoever in the way in which its Private Hire Vehicles are being operated. Those two things are plainly incompatible.

Conclusion

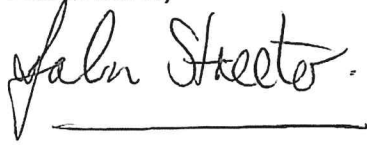
In our view, there is now an overwhelming body of evidence forming that UBL is not a fit and proper person to be granted an Operator's Licence by BHCC. We have endeavoured to summarise that evidence and the bases on which we make this assertion in the paragraphs above.

For these reasons, we consider that Brighton and Hove City Council now has no option but to deny UBL's application to renew its Operator's Licence.

In that event, we the undersigned licensed operators would offer any Brighton and Hove licensed driver displaced from UBL the opportunity to join one of our operated circuits as we would in no way wish to see any impediment upon the ability to work of any individual locally licensed driver.

Kindly acknowledge receipt. We await hearing from you in response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Streeter', with a horizontal line underneath.

John Streeter, Brighton & Hove Streamline Vice-Chairman

Signed on behalf of:

**Brighton and Hove Streamline Ltd
Brighton and Hove Radio Cabs Ltd
Southern Taxis [Brighton] Ltd**



22 September 2017

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

Helen Chapman
General Manager
Taxi & Private Hire
Transport for London

2nd Floor, Zone 2G2,
230 Blackfriars Road,
SE1 8NW

Dear Mr Elvidge

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

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

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

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

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

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

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

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

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

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

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

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

The 2014 Correspondence About the Acceptance of Bookings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The 2016-17 correspondence and TfL’s Investigation

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

17. ULL explained in a letter dated 7 October 2016 that the software underlying the app is the [REDACTED] but the [REDACTED]

18. In November 2016, TfL staff attended a meeting at ULL's offices and ULL presented a slide deck setting out the process by which bookings are accepted. The slide deck explained the booking process as follows:

- a) Rider (ULL describe a passenger as a "rider") makes a booking request for pickup using the Uber app to describe the preferred location
- b) Uber identifies most appropriate driver for the booking request and system communicates the booking request via the app
- c) Driver confirms he/she is able to complete the booking by tapping the driver app
- d) Booking is accepted and recorded by ULL
- e) Details of the booking are sent to both the rider and driver
- f) Rider completes trip. The full booking record is stored by Uber London.

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

19. TfL wrote to ULL on 16 May 2017, requesting permission for an IT systems architect to visit ULL and review the manner in which the technology and booking process works. TfL considered that the information provided by the systems architect would provide it with further clarity and enable it to understand the booking process better. In particular, it would assist in clarifying at which stage a booking is accepted and by which party to the transaction. TfL appointed Deloitte UK to carry out the IT systems architect review and Deloitte visited ULL between 25 July and 4 August 2017. Deloitte produced a report dated 7 August 2017 which details ULL's technology and booking process. .

20. The process flows showing the booking process are on page 19 of the report. In summary, a booking is made in the following way:

- a) A request is made by a rider using the Rider App. The system searches available drivers who are online, eligible and meet certain criteria such as estimated time of arrival (ETA). The system decides whether there are appropriate drivers to fulfil the request and notifies the rider of the ETA to pick up.
- b) The system checks whether surge pricing is valid at the pick-up point, calculates the trip fare estimate and the ETA and this is displayed on the Rider App.

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

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

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

"In correspondence with TfL in 2014, our description provided to you of the booking process was much more generic. At the time, Uber was only operating in London in the UK and the correspondence was not focused upon the timing of acceptance in the way discussions have been in previous months. The emphasis of that exchange was confirming that ULL, and not anyone else, accepts bookings for the purposes of the 1998 Act and we did not go into the level of detail which we have done since corresponding on this from 2016 onwards. To the extent that our lack of precision has caused any confusion or difficulties, please accept our apology ... The detailed process is as has been described to you most recently and in the meeting we held in November 2016. This has been consistently described elsewhere, for example to various licensing authorities across England and Wales and in the witness statement I provided in the Aslam v ULL employment tribunal case."

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

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

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

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

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

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

Further matters relevant to TfL’s decision

Greyball Technology

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

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

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

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

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

Mr van der Woude is a director of over Uber companies.

39. JB informed TfL that it had conducted investigations into certain of Uber's markets in the US and the UK. They had conducted "only limited investigations concerning markets for which Person C [Ms Bertram] has accountability for operational decisions and certain of the markets where the operating companies are those of which Person E [Mr van der Woude] is a director". No reliable conclusions had been formed as to the potential use of Greyball technology for the purposes of interfering with or impeding regulatory enforcement in those jurisdictions outside the UK and Ireland. However, it "is a possibility in [REDACTED] jurisdictions outside of the UK and Ireland".
40. No detail is provided about [REDACTED] jurisdictions' despite TfL requesting comprehensive answers. Such investigations outside the US and UK might conceivably cover jurisdictions for which Ms Bertram has operational responsibility for or where Mr van de Woude is a director. JB and ULL have declined to provide such information.
41. The letter further explained that Ms Bertram was party to email correspondence in 2015 which contemplated the possible use of Greyball technology as a means of addressing what "appeared to be potentially inappropriate action by local law enforcement". Details of these communications, the allegedly inappropriate action of local law enforcement, and the other parties to the correspondence have not been provided. JB also failed again to provide details of which jurisdictions these communications applied to, although it does not assert that the discussions related to a jurisdiction which is not under Ms Bertram's operational control.
42. We do not accept the assertions in ULL's and JB's letters that the aforementioned actions by senior officials have had, or will have no impact on ULL's performance of its licensed activity and are accordingly irrelevant to whether ULL is a fit and proper person to hold a licence in London.
43. Ms Bertram was the nominated representative on ULL's licence applications in 2012. On 18 August 2017, Ms Bertram was appointed as a Director of ULL and was the nominated representative of the licence on ULL's licence application made to TfL on the same date. However, on 31 August 2017 ULL wrote to advise that she was stepping down; that she had resigned as a Director of ULL on 30 August 2017; and that, although she will continue to have operational responsibility elsewhere within the Uber group of companies, she will no longer be engaged at ULL by 17 September 2017 (prior to the expiry of the existing licence).
44. We consider that Ms Bertram's conduct – in particular her correspondence with TfL – has been unsatisfactory and unhelpful. Ms

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

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

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

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

Corporate responsibility

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

Safety and criminal behaviour reporting

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

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

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

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

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

Push Doctor

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

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

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

Enhanced criminal records certificates

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

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

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

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

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

Conclusions

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

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

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

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

Right of Appeal

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

Section 26(1) of the Act states:

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

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

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

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

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

Additional Information

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

Yours sincerely



Helen Chapman
General Manager
Taxi and Private Hire

