Neutral Citation Number: [2023] EWHC 1975 (KB)

Case No: QB-2022-001802

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 July 2023

Before :

MRS JUSTICE FOSTER DBE

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Between :

UBER BRITANNIA LIMITED — **Claimant**

- and -

SEFTON METROPOLITAN BOROUGH COUNCIL — **Defendant**

(1) BOLT SERVICES UK LIMITED
(2) THE APP DRIVERS AND COURIERS UNION
(3) VEEZU HOLDINGS LIMITED
(4) D.E.L.T.A MERSEYSIDE LIMITED — **Intervenors**

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Mr Ranjit Bhose KC and **Mr Josef Cannon** (instructed by **Hogan Lovells**) for the **Claimant**
Mr Charles Holland (instructed by **Sefton MBC**) for the **Defendant**
The **First Intervenor** neither appeared nor was represented.
Ms Claire McCann (instructed by **ITN Solicitors**) for the **Second Intervenor**
Mr Simon Cheetham KC (instructed by **Veezu Holdings Ltd**) for the **Third Intervenor**
Mr Gerald Gouriet KC (instructed by **Aaron & Partners**) for the **Fourth Intervenor**

Hearing dates: 3 and 4 November 2022

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Approved Judgment

This judgment was handed down remotely at 3.00pm on 28 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE FOSTER DBE

MRS JUSTICE FOSTER DBE :

THE PARTIES AND THE CLAIM

1. This is the Claimant Uber Britannia Limited ("UBL")'s Part 8 Claim pursuant to section 19 Senior Courts Act 1981 and CPR 40.20 seeking declaratory relief in respect of an issue of statutory interpretation.

2. UBL is owned by Uber Technologies Inc and has since June 2015 held a series of private-hire vehicle operator's licences ("PHV operator's licences") granted by the Defendant ("Sefton") under Part II of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act"). It is currently also licensed by 52 licensing authorities including Sefton. A sister company, Uber London Limited ("ULL"), is in similar ownership and is the holder of a London PHV operator's licence, granted by Transport for London under the Private Hire Vehicles (London) Act 1998 ("the 1998 Act"). UBL's licences are to operate private-hire vehicles within its area. Sixty-nine other PHV operators are similarly licenced under section 55(1) of the 1976 Act by Sefton.

3. The Claimant invites the Court to interpret Part II of the 1976 Act which, aside from in London and in Plymouth, regulates private-hire vehicles in England and Wales. Plymouth is governed by the Plymouth City Council Act 1975, and London by the 1998 Act.

4. The question the Court is required to answer has been framed as:

   "*In order to operate lawfully under Part II Local Government (Miscellaneous Provisions) Act 1976 is a licensed operator who accepts a booking from a passenger required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking?*"

5. It is UBL's contention in these proceedings the answer to this question is "yes". The First Intervenor, Bolt Services UK Limited ("Bolt"), and the Second Intervenor, The App Drivers and Couriers Union ("ADCU"), support its interpretation whereas the Third Intervenor, Veezu Holdings Limited ("Veezu"), and Fourth Intervenor, D.E.L.T.A Merseyside Limited ("Delta"), oppose UBL's position on the law. Sefton states that it remains neutral but has furnished the Court with helpful evidence, in common with the other Intervenors and with UBL itself.

6. The relevant details of the Intervenors are as follows:

   (a) The First Intervenor, Bolt, offers ride hailing services. They filed an Acknowledgement of Service indicating agreement with the position of the Claimant and seeking the same Order for a declaration but took no part in the hearing.

   (b) The Second Intervenor, ADCU, supporting UBL, is an accredited union, and described as the leading trade union representative body for private-hire drivers in London and the United Kingdom. ADCU states its union is primarily made up of

low paid Black, Asian and other minority ethnic groups and the vast majority work for Uber or other similar app-based operators in London.

(c) The Third Intervenor, Veezu, holds 32 private-hire operator licences across 22 local licensing authorities and is understood to be the largest multi-region private-hire operator outside London. It described itself as trading in a "traditional private-hire" operating manner in contrast to UBL, which Veezu describe as a "ride-hailer", and where bookings are restricted to being made on a smartphone application, for journeys on demand. Veezu do invite and accept bookings for journeys on demand, or on a pre-booked basis from the public by telephone, by walk-in trade and, as to the majority, through a smartphone app via a website. Passengers may pay for their fares in cash directly to the licensed driver as well as by card to the driver or to the private-hire operator on the mobile app. Veezu notes UBL accept payment only via the mobile app. Veezu say they speak for a number of private-hire operators in towns and cities in regions across the UK and that the majority of such operators support their submissions on this application.

(d) Delta, the Fourth Intervenor, aligned against UBL, describe themselves as one of the largest private-hire operators in the UK and the leading operator in Merseyside. They take 130,000 bookings each week, and have around 1,320 drivers. They have consulted other named private hire operators, who represent the majority of private-hire operators in Sefton in terms of market share and, in effect, they act as their voice in these proceedings.

ISSUE

7. The issue concerns the relationship between an "operator" under the 1976 Act, who accepts a booking from a passenger, and that passenger. It is UBL's case that, consistently with the Divisional Court's construction of the 1998 Act in *Uber London Limited v Transport for London (and others)* [2021] EWHC 3290 (Admin), ("the *ULL* case"), an operator who accepts a booking from a passenger enters as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking. The Court in the ULL case held that if not entering into direct contractual relations with the passenger, the operator was acting unlawfully. The matter went to appeal, but not on this point.

FACTUAL CONTEXT

8. UBL explains that Uber provides an app through which some four and a half million passengers each month take trips in the United Kingdom, where over 85,000 drivers earn a living through Uber. When a passenger requests a booking, ULL or UBL according to passenger location, accepts that booking and assumes the functions of a PHV operator. These functions include identifying suitable drivers, keeping records of the booking, and dealing with feedback, questions and complaints.

9. The context to this application relied upon by UBL is succinctly set out in their Details of Claim document:

"*11. In Uber London Limited v Transport for London (and others) [2021] EWHC 3290 (Admin) the Divisional Court considered the question whether, in order to operate*

lawfully under the 1998 Act, a licensed operator who accepts a booking from a passenger is required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking. It was asked to do so by ULL in the light of obiter statements of Lord Leggatt in Uber BV and others v Aslam and others [2021] UKSC 5, at [47] and [48].

12. The Divisional Court answered the question in the affirmative. It held that to interpret the 1998 Act as including such a requirement "gives effect to the statutory purpose of ensuring public safety" [30]. It granted a declaration in the following terms:

> *"In order to operate lawfully under the Private Hire Vehicles (London) Act 1998 a licensed operator who accepts a booking from a passenger is required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking."*

13. The Divisional Court noted that "an operator which does not undertake the required contractual obligation is not operating lawfully" [36]. Following the judgment, Transport for London issued a notice requiring London private hire vehicle operators to ensure that their operating models comply with the law, as held by the Divisional Court.

14. Although the Divisional Court's judgment is concerned with the proper construction of the 1998 Act, that Act is modelled on the 1976 Act and, in the course of its judgment, the Court referred to the 1976 Act as supporting the conclusion to which it came.

15. The Claimant considers that the same question arises under the 1976 Act…"

10. Veezu operates exclusively outside London from South Wales to the West of England, West Midlands and West Yorkshire. They describe 52% of their passengers as being low income. It is the ultimate owner of five private hire vehicle brands, each having operated locally since the early 1980s, a traditional private-hire operator, not a ride-hailer. Vehicles must be pre-booked via a licensed private hire operator; some of its drivers have a private hire licence and a public hire licence. Veezu suggests that the analogy drawn between the 1998 Act as construed in the *ULL* case, is inapt and the 1976 Act must be considered separately. It reflects the manner in which the industry has operated for many years and should produce a different result.

11. Veezu offers two types of service, one to corporate account customers and one to non-corporate account customers. In respect of the former Veezu provides what they describe as "transportation services", meaning booking, despatching a vehicle, keeping records, managing complaints, etc. For non-corporate account customers it is a booking service, but the "transportation services" are provided by the licensed driver. They describe themselves as acting as a "disclosed intermediary" between the driver and the passenger and refer to the different VAT treatment in respect of supplies to the two types of clients. Veezu emphasize their corporate service is often for public sector and non-profit organisations – they provide transportation services for school runs, medical appointments etc, and often provide a passenger assistant to accompany a vulnerable passenger. They understand that Uber and Bolt do not have corporate account customers.

12. Bookings are made in their non-corporate cases by telephone, as to almost half, on the web or by a mobile application downloadable on to a phone. Payment is made to the driver, referred to by Veezu as the "*Driver Partner*", whether by cash, credit card, bank transfer or by a third party service provider accepting payment on their behalf – or this may be to the operator who then accounts to the driver, minus a fee. They point out a difference between this and the pre-registered credit card system used by Uber and Bolt.

13. The operator is described as "deferring responsibility" to the local authority for assessing the driver, in other words, the driver has to warrant that they hold the appropriate vehicle and driver licences and insurance, so the local authority is responsible for the assessment of whether or not they are a fit and proper person and award of a licence confirms that they are.

14. The self-employed status of the driver as described by Veezu has tax consequences which are reflected in HMRC guidance and VAT Notice 700/25. Necessarily those who operate on a self-employed basis will be making taxable supplies in the form of transport to passengers, and services to another taxi business where supplied to them under contract. This is different from those who are driving as employees. Veezu notes that following the *Aslam* case in the Supreme Court, although Uber treats its drivers as workers for the purposes of employment law, private-hire operators have continued to treat their drivers as self-employed and, as far as they understand, 100% of similar operators do the same; they consider their Driver Partners as self-employed.

15. Delta describes itself as one of the largest private-hire operators in the UK. Based on Merseyside they hold licences from Sefton, Liverpool, Knowsley and St Helens, as well as West Lancashire and Wolverhampton. The model described as operating for Delta involves operating on a "best endeavours" obligation to passengers. They do not provide the journey itself. Until 1976 the private-hire industry in Merseyside was unregulated other than in the city of Liverpool. Delta were from that date required to be licensed as an operator and use only licensed drivers and vehicles. The core of the business, although parts have become automated, has not changed. Delta just puts a passenger in touch with the driver who undertakes to provide the journey. The passenger and the driver arrange the details of the journey and the fare is paid directly to the driver who keeps it. Other companies use drivers they employ, and Delta says hybrid operations use either self-employed or employed drivers as required. Some only do contract work in which they make the agreement to provide the transport itself. Delta has had a mixture of business models, but its core business has been as described. The employed driver model, which involved about eight employees, operated from 2012 to 2020 but was stopped at the time of the pandemic.

16. Delta developed app-based booking for smart phones, and describes a change from 1976 of approximately 287,000 bookings, to 12 million in 2017. Delta emphasizes differences between their app-based booking system and that of Uber. Customers are not required to give a destination, nor need they have an uploaded payment card. No indication of drivers in the vicinity is given because the acceptance of the journey from Delta is a matter of individual choice of the driver. Once accepted, the Delta app shows the customer how far away the taxi is.

17. Delta describes its service as a "booking handling service", the supplier of the transportation being the driver. There would be VAT consequences, namely an addition of 20% chargeable if Delta were required to be the provider of the journey.

Additional staff would be required to calculate and collect the tax and to insure Delta against failing drivers or a refusal to relinquish the 20% mark-up necessary from the fare paid to the driver.

18. Delta indicates, with regard to safety, that Sefton requires them to investigate any complaints and assert that the app in particular has made their services verifiable and safe. They adhere to the strictest standards and observe their regulatory responsibilities very strictly because any breach may lead to the revocation of their licence. There is no public safety issue they argue which could be addressed only by the agreement to make the journey being between themselves and the passenger.

LICENSING FRAMEWORK

19. The central definition for the question at issue is found in the interpretation section of the 1976 Act, section 80. The meaning of "operate" is expressed as:

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

and a "*private hire vehicle*" means:

"*.. a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab or tramcar, which is provided for hire with the services of a driver for the purpose of carrying passengers*".

20. The licensing requirements of operator, vehicle, and driver are contained in Section 46, which provides a criminal sanction in cases of breach:

"*(1) 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;

(e) no person licensed under the said section 55 shall in a controlled district operate any vehicle as a private hire vehicle -

(i) if for the vehicle a current licence under the said section 48 is not in force; or

(ii) if the driver does not have a current licence under the said section 51.

...

(2) If any person knowingly contravenes the provisions of this section, he shall be guilty of an offence."

21. Section 55 is the licensing provision:

"*(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;

..."

22. Section 55A [added by section 11 of the Deregulation Act 2015, with effect from 1 October 2015] explains sub-contracting and its limitations, and provides that:

"*(1) A person licensed under section 55 who has in a controlled district accepted a booking for a private hire vehicle may arrange for another person to provide a vehicle to carry out the booking if—*

(a) the other person is licensed under section 55 in respect of the same controlled district and the sub-contracted booking is accepted in that district;

(b) the other person is licensed under section 55 in respect of another controlled district and the sub-contracted booking is accepted in that district;

(c) the other person is a London PHV operator and the subcontracted booking is accepted at an operating centre in London; or

(d) the other person accepts the sub-contracted booking in Scotland.

(2) It is immaterial for the purposes of subsection (1) whether or not subcontracting is permitted by the contract between the person licensed under section 55 who accepted the booking and the person who made the booking.

...

(6) In this section, "London PHV operator" and "operating centre" have the same meaning as in the Private Hire Vehicles (London) Act 1998."

23. Section 55B deals with the imposition of criminal liability as between operators operating under section 55A and places it upon the operator who accepted the booking only when they had knowledge, thus:

"*(1) In this section—*

"the first operator" means a person licensed under section 55 who has in a controlled district accepted a booking for a private hire vehicle and then made arrangements for

another person to provide a vehicle to carry out the booking in accordance with section 55A(1);

"the second operator" means the person with whom the first operator made the arrangements (and, accordingly, the person who accepted the sub-contracted booking).

(2) The first operator is not to be treated for the purposes of section 46(1)(e) as operating a private hire vehicle by virtue of having invited or accepted the booking.

(3) The first operator is guilty of an offence if—

(a) the second operator is a person mentioned in section 55A(1)(a) or (b),

(b) the second operator contravenes section 46(1)(e) in respect of the sub- contracted booking, and

(c) the first operator knew that the second operator would contravene section 46(1)(e) in respect of the booking."

24. Section 56, in place since enactment of the 1976 Act, deems every contract for hire to be with the arranger irrespective of whether he provides the ride. It places an obligation on operators who arrange and/or accept bookings to keep records, and imposes criminal penalties for breach in certain circumstances. It provides that:

"*(1) For the purposes of this Part of this Act every contract for the hire of a private hire vehicle licensed under this Part of this Act shall be deemed to be made with the operator who accepted the booking for that vehicle whether or not he himself provided the vehicle.*

(2) Every person to whom a licence in force under section 55 of this Act has been granted by a district council shall keep a record in such form as the council may, by condition attached to the grant of the licence, prescribe and shall enter therein, before the commencement of each journey, such particulars of every booking of a private hire vehicle invited or accepted by him, whether by accepting the same from the hirer or by undertaking it at the request of another operator, as the district council may by condition prescribe and shall produce such record on request to any authorised officer of the council or to any constable for inspection.

(3) Every person to whom a licence in force under section 55 of this Act has been granted by a district council shall keep such records as the council may, by conditions attached to the grant of the licence, prescribe of the particulars of any private hire vehicle operated by him and shall produce the same on request to any authorised officer of the council or to any constable for inspection.

…

(5) If any person without reasonable excuse contravenes the provisions of this section, he shall be guilty of an offence."

25. Section 75(1)(a) provides more assistance on PHVs – its purpose is to exclude from the application of the Part II regime of the Act, vehicles under contracts for hire made outside the district but not made available for hire *inside* the district. It illustrates the centrality of the contract for hire, and reflects again that the concept of PHVs contains within it the notion of a driver as well. It provides:

"*(1) Nothing in this Part of this Act shall—*

(a) apply to a vehicle used for bringing passengers or goods within a controlled district in pursuance of a contract for the hire of the vehicle made outside the district if the vehicle is not made available for hire within the district; A "private hire vehicle" under section 80(1), is a vehicle provided for hire "with the services of a driver"."

26. The 1998 Act which applies to private hire vehicles in London, contains a definition of "operator" that is more expansive than the wording of the 1976 Act, yet must, say UBL (given the wording of section 56(1) of the older instrument) reflect the true extent of the section 80 definition. Section 1(1)(b) defines "operator" as:

"*a person who makes provision for the invitation or acceptance of, or who accepts, private hire bookings*".

27. Section 5 of the 1998 Act deals with sub-contracting; it provides that:

"*(1) A London PHV operator ("the first operator") who has in London accepted a private hire booking may not arrange for another operator to provide a vehicle to carry out that booking as sub-contractor unless—*

(a) the other operator is a London PHV operator and the sub-contracted booking is accepted at an operating centre in London;

(b) the other operator is licensed under section 55 of the Local Government (Miscellaneous Provisions) Act 1976 (in this Act referred to as "the 1976 Act") by the council of a district and the sub-contracted booking is accepted in that district; or

(c) the other operator accepts the sub-contracted booking in Scotland.

[...]

(4) It is immaterial for the purposes of subsection (1) whether or not sub-contracting is permitted by the contract between the first operator and the person who made the booking.

(5) For the avoidance of doubt (and subject to any relevant contract terms), a contract of hire between a person who made a private hire booking at an operating centre in London and the London PHV operator who accepted the booking remains in force despite the making of arrangements by that operator for another contractor to provide a vehicle to carry out that booking as sub-contractor."

28. The parties opposing the declaration say the difference in wording between the 1976 and 1998 Acts is significant.

29. As the parties to the present case observe, private hire vehicles or minicabs as they were usually called, were for a long time unregulated in London until the passage of the 1998 Act. At the time of enactment of that Act and certainly the 1976 Act, minicab bookings were made by telephone or personally at a minicab office. A number of cases have considered the operation of the minicab trade under these Acts and give useful guidance on the context and the meaning of the statutory provisions, both as to the older systems, and for the more up to date booking mechanisms of specialist apps on smart phones.

CASELAW

30. In *Milton Keynes Council v Skyline Taxis Limited* [2018] PTSR 894; [2017] EWHC 2794 (Admin) the Court, in common with the current matter, considered out of London private-hire vehicle operations under the 1976 Act. Hickinbottom LJ described two types of car available to hire to transport passengers, hackney carriages or taxis, alternatively, private-hire vehicles or minicabs. Different rules applied to each. The provisions which apply to out of London private-hire vehicle operations differ from those that apply to minicabs in London. One of the main differences is that only taxis may ply for hire on the streets. Private-hire vehicles may only be hired to transport passengers on a pre-booked basis through an operator licensed by the relevant local authority.

31. Hickinbottom LJ isolated a number of features of the regulatory system that derived from earlier authority, most importantly for the present case:

    i) A private hire vehicle requires three licences to be in existence, sometimes referred to as "the trinity of requirements" (paragraph [5]);

    ii) The object of the 1976 Act is protection of the public, that is of the passenger (paragraph [6] citing *St Albans District Council v Taylor* [1991] RTR 400, 403A—B, per Russell LJ.)

    iii) The licensing authority (in that case all licences were required to be issued by a single authority) controls the level and nature of record keeping required of the operator (paragraph [7]);

    iv) The term "operate" is a term of art and focusses on the antecedent arrangements under which the vehicle was provided, not the provision of the vehicle itself (paragraph [8], citing Dyson J in *Bromsgrove District Council v Powers* (unreported) 16 July 1998);

    v) Who accepts the booking is important because under section 56(1) every contract for the hire of a private hire vehicle is deemed to be made with the operator who accepts the booking for that vehicle whether or not he himself provides the vehicle (paragraph [11]).

32. In *Skyline* at paragraph [5] and following the comprehensive description of the effect of the 1976 Act was expressed thus:

    "*... by virtue of Part II of the 1976 Act* ***a vehicle may not work as a private hire vehicle in a controlled district unless there are in existence three licences.***

(i) An operator's licence issued under section 55. Section 55 provides that a local authority shall, on receipt of an application for the grant of a licence to operate private hire vehicles, grant to that person a licence unless it is satisfied that that person is not a fit and proper person and, if the applicant is an individual, he has not been disqualified from driving. The local authority may attach such conditions to the licence as it considers reasonably necessary: section 55(3).

(ii) A vehicle licence issued under section 48, which sets out matters about which the local authority must be satisfied before issuing such a licence, such as the suitability, safety and comfort of the vehicle.

(iii) A driver's licence issued under section 51, which again sets out matters about which the local authority must be satisfied, such as the fitness of the person to hold such a licence.

6 The underlying purpose of this regulatory regime is "to provide protection to members of the public who wish to be conveyed as passengers in a motor car provided by a private hire organisation with a driver": St Albans District Council v Taylor *[1991] RTR 400, 403A—B, per Russell LJ. It is well established that, to enable coherent regulation and enforcement, in respect of any hiring, all three licences must be issued by the same local authority (Dittah v Birmingham City Council [1993] RTR 356), something which has been called "the trinity of requirements".*

7 Again ***as part of the regulatory and enforcement scheme, section 56 requires the holder of any section 55 operator's licence to keep such records as the local authority***

> *"**may, by condition attached to the grant of the licence, prescribe** and shall enter therein, before the commencement of each journey, such particulars of every booking of a private hire vehicle invited or accepted by him, whether by accepting the same from the hirer or by undertaking it at the request of another operator, as the [local authority] may prescribe" (section 56(2));*

as well as particulars of any private hire vehicle he operates: section 56(3). ***The licensing authority therefore controls the level and nature of the record keeping of any operator****. An operator is required to produce such records on request to any authorised officer of the local authority. A breach of the requirements of section 56 is a criminal offence: section 56(5).*

8 ***"Operate", for the purposes of section 55****, has been considered by this court in a series of cases, including Britain v ABC Cabs (Camberley) Ltd [1981] RTR 395,Windsor and Maidenhead Royal Borough Council v Khan [1994] RTR 87, Adur District Council v Fry [1997] RTR 257 and Bromsgrove District Council v Powers (unreported) 16 July 1998 (Dyson J). These firmly establish that, in this context, "operate" does not have its common meaning. Rather,* ***it is a term of art defined strictly by section 80(1) as meaning: "in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle . . ."*** *Therefore, as Dyson J said in the Powers case:*

"the definition of the word "operate" ***focuses on the arrangements pursuant to which a private hire vehicle is provided and not the provision of the vehicle itself . . . the***

word "operate" is not to be equated with, or taken as including, the providing of the vehicle, but refers to the antecedent arrangements."

9 Section 46(1)(e) provides:

"no person licensed under the said section 55 shall in a controlled district operate any vehicle as a private hire vehicle-(i) if for the vehicle a current licence under section 48 is not in force; or (ii) if the driver does not have a current licence under section 51."

And, if any anyone knowingly contravenes that provision, he is guilty of an offence."

…

11 ***Who accepts the booking is, however, important; because, by section 56(1), for the purposes of Part II of the 1976 Act, every contract for the hire of a private hire vehicle is deemed to be made with the operator who accepts the booking for that vehicle whether or not he himself provides the vehicle.***"

[Emphasis added].

33. In the Employment Tribunal case of *Aslam & Ors v Uber BV & Ors* [2016] EW Misc. B68 (ET) (28 October 2016) Uber argued (contrary to its current position, where they accept that they are employers), that it did not employ drivers to provide transport services for passengers, rather it was the drivers' agent. That case was appealed to the Court of Appeal and finally the Supreme Court. At the Employment Tribunal, dismissing Uber's no-contract analysis it was said at paragraph [87]:

"*Any organization (a) running an enterprise at the heart of which is the function of carrying people in motor cars from where they are to where they want to go and (b) operating in part through a company discharging the regulated responsibilities of a PHV operator but (c) requiring drivers and passengers to agree as a matter of contract that it does not provide transportation services (through UBV or ULL) and (d) resorting in its documentation to fictions, twisted language and even brand new terminology, merits, we think a degree of scepticism.*"

34. On appeal from the decision of the Employment Tribunal the Court of Appeal made reference to Uber's regulatory obligations in the context of its contractual arrangements and the worker status of drivers:

"87. *The Appellant's submissions repeatedly referred to the regulatory regime as if it were irrelevant or of trivial importance. We disagree. In our view the statutory position strongly reinforces the correctness of the ET's conclusion that the drivers were providing services to Uber (specifically to ULL), not the other way round.*

88. ***ULL is the PHV operator for the purposes of the PHVA 1998 and the regulations made under it. It is ULL which has to satisfy the licensing authority for the purposes of section 3(3)(a) of the Act that it is a fit and proper person to hold a PHV licence. It is ULL which alone can accept bookings, and ULL which is required by the PHV***

Regulations to provide an estimate of the fare on request. *For ULL to be stating to its statutory regulator that it is operating a private hire vehicle service in London, and is a fit and proper person to do so, while at the same time arguing in this litigation that it is merely an affiliate of a Dutch registered company which licenses tens of thousands of proprietors of small businesses to use its software, contributes to the air of contrivance and artificiality which pervades Uber's case.*

89. Consistently with what we have said about the reality being reinforced by the regulatory framework, it is of interest to note that section 56 of the Local Government (Miscellaneous Provisions) Act 1976 expressly provides for the hire of a licensed private hire vehicle to be deemed to be made with the operator who accepted the booking, whether or not he himself provided the vehicle. For this purpose, it is irrelevant that the Act only applies outside London."

35. In the Supreme Court Lord Leggatt, without deciding the issue, said as follows:

[46] It is an important feature of the context in which, as the employment tribunal found, Uber London recruits and communicates on a day to day basis with drivers that, as mentioned earlier: ***(1) it is unlawful for anyone in London to accept a private hire booking unless that person is the holder of a private hire vehicle operator's licence for London; and (2) the only natural or legal person involved in the acceptance of bookings and provision of private hire vehicles booked through the Uber app which holds such a licence is Uber London. It is reasonable to assume, at least unless the contrary is demonstrated, that the parties intended to comply with the law in the way they dealt with each other.***

[47] ***Uber maintains that the acceptance of private hire bookings by a licensed London PHV operator acting as agent for drivers would comply with the regulatory regime. I am not convinced by this.*** *References in the Private Hire Vehicles (London) Act 1998 to 'acceptance' of a private hire booking are reasonably understood to connote acceptance (personally and not merely for someone else) of a contractual obligation to carry out the booking and provide a vehicle for that purpose. This is implicit, for example, in s 4(2) of the Act quoted at para [31] above.* ***It would in principle be possible for Uber London both to accept such an obligation itself and also to contract on behalf of the driver of the vehicle. However, if this were the arrangement made, it would seem hard to avoid the conclusion that the driver, as well as Uber London, would be a person who accepts the booking by undertaking a contractual obligation owed directly to the passenger to carry it out. If so, the driver would be in contravention of s 2(1) of the Private Hire Vehicles (London) Act 1998 by accepting a private hire booking without holding a private hire vehicle operator's licence for London. This suggests that the only contractual arrangement compatible with the licensing regime is one whereby Uber London as the licensed operator accepts private hire bookings as a principal (only) and, to fulfil its obligation to the passenger, enters into a contract with a transportation provider (be that an individual driver or a firm which in turn provides a driver) who agrees to carry out the booking for Uber London.***"

[Emphasis added].

36. The Claimant relies on the observations emphasised above as a guide to interpretation of the 1976 Act which it argues is implicitly to the same effect on the material issues as the 1998 Act.

37. Thereafter, and relying upon Lord Leggatt's observations in the *Aslam* case, in the *ULL* case the Divisional Court held that, in order to operate lawfully under the 1998 Act in London, a licensed operator who accepts a booking from a passenger is required to enter as principal into a contractual obligation with the passenger. UBL relies upon this finding as applicable to licensing outside London under the 1976 Act and accordingly invites the declaration based on that reasoning.

38. In that case the Court said:

> "*28. In our judgment* ***the 1998 Act plainly contemplates that acceptance of a booking by the operator will create a contract between the operator and the passenger and, furthermore, that this will be a contract by which the operator undertakes an obligation as principal to provide the transportation service, that is to say to provide a vehicle and driver to convey the passenger to the agreed destination****. That is what is meant by a "private hire booking". The language of section 4, "private hire vehicles and drivers which are available to him for carrying out [a] booking accepted by him" indicates that it is the operator which carries out the booking (i.e. performs the contractual obligation to convey the passenger) and that it does so by means of the licensed vehicles and drivers available to it.*"
>
> [Emphasis added].

OTHER CONTEXT

39. The Parties have helpfully drawn attention to the underlying history of the two-tier regulatory regime for taxis and private hire vehicles. They explained the 17th century roots of the older of the two tiers, the carriages that ply for hire. The beginning of the carriages that do not ply for hire, the "job-master" and private-hire tier, was in the livery stable job-masters.

40. This was recognised in the Inter-Departmental Committee on Cabs and Private Hire Vehicles "Hindley Report" of February 1939 and was unregulated. The hackney carriage tier was different, 19th century legislation had imposed licensing requirements and restrictions on that sector. The Hindley Report (by paragraph 35) reflected that the private hire "operator" took the orders, organised the service and controlled the drivers – who were his employees. That report recommended licensing of the operators.

41. The war intervened and the next consideration was in The Maxwell Stamp Report of 1970 which related only to London. This (dealt with in more detail below) recommended that the two-tier system continue. It recognised the diversity and complexity of the sector with several business models including agency and subcontracting. The Committee was clear that operators should be licensed and that it was with the operator and not the driver that a person made their contract, and they should have overall responsibility - whether or not they owned the vehicle in question or employed the driver, (paragraph 9.6). The Committee expressly recognised that there were advantages to sub-contracting but recommended that in such cases the

original operator should retain responsibility so the hirer's contract should be deemed to be with the original operator.

42. Sefton have pointed to other regional Acts (the Liverpool Corporation Act 1972 and the Plymouth City Council Act 1975) that were influenced by this 1970 Report, and note also that the 1976 Act was "adoptive", in other words it was a matter of adoption where desired by local authorities - such as Sefton.

43. Sefton observes that the construction of Part II of the 1976 Act means that the activity criminalised by section 46 in default of a valid licence, is the same as that permitted by an operator's licence issued under section 55. It submits the purpose in bringing into regulation the hitherto unregulated activities was clearly public protection, and notes that there is in the Act an offence of unnecessarily prolonging a journey and also that the concept of a "fit and proper person" connotes honesty. They point to an intention in the 1976 Act to preserve the distinction between the hackney carriage cabs and the PHV model. They suggested a contrary reading to UBL's was possible, and regulation might be achieved through licence conditions to achieve public safety.

SUBMISSIONS

44. Relying upon Lord Leggatt's statement in *Uber BV and others v Aslam and others* [2021] UKSC 5 at [70] to the effect that:

"*The modern approach to statutory interpretation is to have regard to the purpose of a particular provision and to interpret its language, so far as possible, in the way which best gives effect to that purpose.*"

UBL submit that the particular purpose of the sections under consideration is public protection and the imposition of a contract between the operator as principal and the passenger clearly serves this purpose.

45. They point to the fact that judicial interpretations of the 1976 Act have shown that the draughtsman left certain matters of its operation implicit. The ability to sub-contract was one of those functions that was not stated explicitly in clear words. It required to be spelt out. Before its amendment with effect from October 2015 the 1976 Act was interpreted as permitting subcontracting, although requiring that the operator made use when subcontracting, only of vehicles and drivers who had been licensed by the same authority as the operator, when operating within that district; see *Dittah v Birmingham City Council [1993] RTR 356,* per Kennedy LJ at 363*; Bromsgrove DC v Powers (QBD, 16 July 1998,* unrep per Dyson J, *Shanks v North Tyneside Borough Council [2011] EWHC Admin 533,* per Latham LJ at [22]*;* and *Skyline* [above] per Hickinbottom LJ at [11].

46. In other words, it is submitted, no *express* provision of the 1976 Act on enactment permitted a licensed operator who accepted a private-hire booking to arrange for another person to provide a vehicle together with the services of its driver, to carry out that booking – but the Act has been so interpreted. The Claimant points to section 56(1) (above) which assumes that it is permissible for an operator to accept a booking and another operator to provide the vehicle. This is also reflected in section 56(2) which imposes record-keeping obligations in respect of every booking invited or accepted by the operator whether that booking is accepted direct from the passenger or whether

undertaking the booking at the request of another operator, as was said in *Powers* (above):

> "*It is also common ground that there is no prohibition on an operator subcontracting the providing of a vehicle to another operator. Such an arrangement is explicitly acknowledged and sanctioned by Section 56(1) and (2).*"

47. UBL notes that the effect of the 1976 Act as enacted was extended by amendment in 2015 and the addition of sections 55A and 55B. The permission to subcontract was made explicit and enlarged to include circumstances beyond those of a common licensor as previously. This extension brought the 1976 provisions in line with the scope of the 1998 Act. In a similar fashion the 1976 Act does not speak expressly of the acceptance of a booking but this is implicit in section 56, which speaks of the "operator who accepted the booking", and which the 1998 Act made explicit in sections 1 and 5 (above). A "private hire booking" is not defined as such in the 1976 Act - although its sense emerges from section 80 read with section 56, but the 1998 Act defines it. None of these differences undermine the similarity of effect, submits UBL, as between the earlier and the later Act.

48. The Claimant (by reference to *Bennion on Statutory Interpretation*, 8th edition, 2023, entry at 24.14 and the cases there cited) relies on the Explanatory Notes to the 2015 amendment and emphasises those paragraphs which are emphasised below:

> "*60. **In the new section 55A, subsection (1) allows** an operator who accepts a booking for a private hire vehicle to sub-contract it to four types of operator - **(a) an operator licensed and located in the same district as the initial operator;** (b) an operator licensed and located in a different district from the initial operator (a different district but one which is still governed by the same legislation – in practice this means a district in England or Wales but outside London or Plymouth); (c) an operator licensed and located in London; or (d) a person located in Scotland. **Scenario (a) constitutes a re-statement of existing law – it is already lawful for a private hire vehicle operator to sub-contract a booking to another operator licensed in the same licensing district. Scenario (a) has been included because it is not currently expressly stated on the face of the Act and stating all four scenarios where an operator can sub-contract a booking in this amendment makes the law clearer and easier to follow.***"

49. The Claimant argues that the effect of the 2015 amendments is that, whilst allowing for a variety of sub contractual arrangements, the contract between the first operator and the passenger remains in force despite the making of arrangements with another operator that that other operator will provide the vehicle to carry out the booking (sections 55A(1) (a)-(c) and 56(1) of the 1976 Act and section 5(1)(a)-(c) of the 1998 Act). A corollary of this, submits UBL is that only a licensed operator may accept a booking for a private hire vehicle under the statutory scheme. The 1998 Act makes as much explicit but it is implicit in the 1976 Act. They submit that the logic of the construction is reinforced by the resulting anomalous position if their submissions fail. It is put in these terms in UBL's skeleton argument, describing the enforcement mechanisms:

> "*If … the 1976 Act does require a licensed operator who accepts a booking from a passenger to enter as principal into a contractual obligation with the passenger to provide that journey, any operator who does not do so will be operating unlawfully:*

Uber London Limited at [35-37]. It would be incumbent on a licensing authority to take steps to see that licensed operators' terms and conditions are compliant and, failing compliance, the authority could take enforcement action (ibid, [37]). Most obviously, this would be by attaching conditions to a licensed operator's licence under section 55(3) ...

By contrast, if there is no such requirement under the 1976 Act then the law will be out of step with the 1998 Act, with the outcome that London passengers enjoy greater protection than those outside London."

50. ADCU submit that the answer the question in issue is obviously "yes". They support UBL in almost all of their submissions, and make four essential points:

    i) The clear language of section 56(1) of the 1976 Act supports such a construction whether read alone or in conjunction with the other provisions of Part II of the Act.

    ii) The public safety purpose of the licensing regime in Part II of the 1976 Act compels a reading which gives best effect to that purpose.

    iii) This reading places the regulatory and contractual burden on the party or parties who can best promote the safety of the public – namely, the licensing authority (i.e. local councils) and the operator, not drivers who are (unless they are driver-operators) subordinate to operators and not in nearly as good a position to promote public safety.

    iv) The points raised in opposition do not grapple with the statutory construction issues and centre on practical but illusory problems which are not properly evidenced in any event (nor have they transpired since the judgment in Divisional Court in the *ULL v TfL* case (in December 2021)). Further, the terms of the written agreement may well not assist with determining the reality of the relationship between the parties (per *Autoclenz Ltd v Belcher* [2011] UKSC 41; [2011] ICR 1157).

51. ADCU suggests that placing the contractual burden upon drivers as advocated by Veezu and Delta would put the drivers, who have no control, in the position of accepting all the risk. Further, the licensing authorities can more easily exercise control and enforce safeguards on the much smaller class of operators, rather than individual drivers and it is in any event the operator who bears the obligation to keep and produce records under section 56(2) of the 1976 Act. Whilst drivers must of course be insured, better efficiency and safety compliance is achieved by placing responsibility on operators.

52. ADCU argue that section 56(1) makes clear that, even where the operator is not himself actually providing the vehicle in respect of which he has accepted a booking, because it is the driver's own vehicle, not the operator's or because the operator has sub-contracted the provision of the vehicle to another operator, the contract for the hire of that vehicle is still deemed to have been entered into with the first operator - not the person who is providing the vehicle – whether that is the first operator's driver or a sub-contractor operator, or a driver of the sub-contractor operator. They argue the use of the word "the" and "that" rather than "a"; and the fact that section 56(1) expressly provides that it applies for the purposes of the entirety of Part II not just section 55A,

and to "every" contract for the hire of a private hire vehicle licensed under Part II means this is the correct reading. This wider reach of section 56(1) better advances the statutory purpose of public safety, protecting passengers from what Ouseley J described as "*… a variety of mischiefs including unfitness of the driver, the safety of the vehicle and the absence of insurance*" in *TfL v Uber* [2015] EWHC 2918 (Admin); [2016] RTR 12 at [28].

53. On either this or the narrower UBL view, the result is the same they submit: it requires that a licensed operator, who has accepted a booking from a passenger for a PHV is required to enter (as principal) into a contractual obligation with the passenger to provide the journey which is the subject of the booking.

54. Although stating they remain essentially neutral on the central issue, an argument is advanced by Sefton by reference to older caselaw, that a contractual analysis is unhelpful to understanding licensing provisions. Rather, licensing focuses on the conduct and management of the business in question. By this route they submit it is possible for a mere agent of a contracting principal to be an "operator" within the meaning of section 80(1) of the 1976 Act. Those, they suggest, who take part in the conduct and management of the public facing part of operations *only* would be considered to require licensing, but not others. They look to section 56(1) which they say is difficult to explain if it is the case that an operator who accepts a booking is required to enter as principal into the contract with the passenger to provide the journey. It concerns what Sefton refer to as "regulatory" responsibility; and they do not subscribe to the view that the agency model undermines public safety and have not proscribed it in their local authority area. They regard agents as "operators" and subject to the Act as such.

55. The minicab representatives' opposition to the Claimant's arguments is expressed in terms that the 1976 Act and the 1998 Act are not parallel legislation. It is not the case say Veezu that the 1998 Act was "modelled" on the 1976 Act. In any event the 1976 Act reflects a long-established industry model of direct contracts between driver and passenger, not operator and passenger to which UBL's construction would do violence. The Court in the *ULL* case did not hear full argument on the proper interpretation of s.56(1) of the 1976 Act, and the decision should not be regarded as a helpful precedent, it concerned only the 1998 Act. Similarly, there is more to say on the legislative purpose and history of that Act. In particular section 56(1) and the deeming provision are a contraindication of any wider direct contractual relationship between operator and passenger. The definition of "operator" under the 1976 and 1998 Acts differs and this points to a material difference, because the 1976 Act does not mention "acceptance". Acceptance may, it is submitted, but need not, be by the operator. Section 80 alone is insufficient for such a meaning - the 1998 Act added the words and added meaning. There is no assistance to be gained from the record-keeping obligations placed on an operator – that is just a sensible safety requirement, and not indicative of anything more. Further, section 55A(1)(a) does not add meaning to the 1976 Act, or explain its implications – it was a deregulatory provision only.

56. As to section 56(1), Veezu submit that its purpose is to make sure that the operator "who provides for the invitation or acceptance of a booking" but is *not* "a party to the contract of hire" be deemed the operator. They point particularly to the fact that the section, in common with section 80, does not say in terms that an operator acts

unlawfully if he does not enter as principal where he provides for the invitation or acceptance of a booking.

57. Further, it was not the case that public safety was only a question of recourse against operators – if the UBL interpretation were preferred, costs would rise and the consequent shrinking of the market would be a real public disbenefit given the absence of proper public transport provision. Competition would be impacted, further issues with software would arise (that UBL alone was better prepared for), and a further competitive advantage to them would result. Tax differences with cash bookings would require HMRC changes – again there would be no impact upon UBL which did not accept cash in their operating model and whose payment methods were very limited compared to a traditional private hire model.

58. The courts have recognised that the "Uber model" is unique say Veezu. This is illustrated by the fact that there had been no revision of the employment status of drivers within the private hire sector generally in spite of the Supreme Court's decision in *Uber BV v Aslam [2021] UKSC 5, [2021] 4 All ER 209* to the effect that the drivers were "workers" under the Employment Rights Act 1996 s.203(3).

59. Veezu says the consequence of this application succeeding would be inevitable increases in the cost of running a business as a private hire operator, and inevitably the Claimant is better placed to absorb them than its smaller competitors. It would lead to fewer smaller private hire operators in the market.

60. Delta, in opposing the Claimant's interpretation, explains that it does not provide journeys. It operates as a booking agent or 'introducing agent' and its core business is to put passengers in touch with available drivers. Their role as introducing agent is a legal model that is widely recognised commercially - they draw attention to the *Bowstead and Reynolds on Agency,* 22nd edition, 2020, entry at 1.120 where the role is described as an intermediary, who makes no contracts but introduces parties who wish to do so. Delta states that it operates to a business model that was commonplace before the introduction of the first system of licensing brought about by the 1976 Act, and submits that the Act must be read in the light of a Parliamentary intention to licence *their* business model - there being no proscription of such a model in the 1976 Act. They rely on similar arguments to Veezu as to differences between the 1976 and the 1998 Acts and submit the deregulatory provision enacted in 2015 as sections 55A and 55B are inapt to bear the interpretive weight put on them by UBL.

61. They submit that the section 80 definition distances the operator from the actual journey undertaken – and also that there is no commensurate offence under the 1976 Act of accepting a booking without entering into the contract with the passenger/hirer as principal. They argue that the deeming provision would be unnecessary if the contract were always required to be between the operator and the passenger.

62. They assert a significant detrimental effect upon the "traditional" private-hire operators were the UBL declaration to be granted; putting little weight on the fact that UBL denies that this would be so, citing changes to their own operating system and the adaptation of the industry following the *Aslam* case.

CONSIDERATION

63. I have come to the clear conclusion that UBL's suggested construction of the 1976 Act is correct.

64. Accordingly, the question posed is to be answered "*yes*". The reasoning is as follows.

(i) Construction of the 1976 Act

65. Turning first to the wording of the Act itself, the following may be seen:

(i) The central arrangement under the 1976 statute is between the operator and the hirer or passenger. A person who "*operates*" under the 1976 Act is a person who in the course of business makes provision for the invitation or acceptance of bookings for a private hire vehicle: that is to say a vehicle *with the services of a driver*, [for fewer than nine people and not a hackney carriage or public service vehicle etc.]. The description suggests the central statutory regulated arrangement is between the provider of this compendiously described service – the provision of a vehicle complete with the services of a driver – and the hirer. The function of the driver is comprehended in what is supplied by the operator. The 1998 Act makes even clearer the centrality of this role by its opening sections.

(ii) The notion of acceptance is necessarily included (see below) and the preliminary arrangement between accepter of the booking and the hirer/passenger remains the primary regulatory relationship even when another provides the vehicle with a driver. Section 56(1) makes clear that one remains the operator under the Act whether one provides the vehicle oneself, or another does so. This derives from the wording "*... every contract for the hire of a private-hire vehicle licensed under the Part of this Act shall be deemed to be made with the operator who accepted the booking for that vehicle whether or not he himself provided the vehicle*". Thus, the term "operator" attaches still, under the Act, even where another person, who did not accept the booking, is the provider of the vehicle with the driver (although they might be a person who also requires an operator's licence). The 1998 Act makes explicit the role of subcontractor and the imposition upon the acting operator of the central regulatory relationship with the passenger/hirer, explained as "for the avoidance of doubt" in section 5(5) of that Act.

(iii) Section 56(1) contains a deeming provision which operates in my judgement to make clear that this analysis is effective for those cases where an operator passes a passenger/hirer on to another operator – which operation may be quite unknown to the passenger. It maintains, for those cases, the relationship of the first accepting operator as principal with that passenger. There is no reason on the wording to limit this to the first sub-contractual situation only, as suggested by UBL: the contract of hire should always be with the operator who has interacted with the hirer/passenger, since he can control the booking, the driver under the Act is, as submitted by ADCU, subordinate to the operator, working (unlike the hackney cab who plies for hire), entirely *through* the operator. The Act deems the contractual relationship, essentially, for the avoidance of doubt (wording used in the 1998 Act in section 5(5)).

(iv) Section 56(2) shows that an operator may trade by inviting or accepting bookings from a "*hirer*" (i.e. directly with the customer) *or* may provide such a journey to the hirer because requested to by another operator. The wording "... *particulars of every booking of a private-hire vehicle invited or accepted by him, whether by accepting the same from the hirer or by undertaking it at the request of another operator...*" shows that where a person is an operator in whatever capacity, (i.e. accepter of the booking or the undertaker of it for another operator), the obligations of record-keeping by the licensed operator are imposed. The materials must, when required, be submitted to the licensing authority, and failure is subject to criminal sanction. This is reflected in London in the 1998 Act under section 4(3)(d). The regulatory importance of the operator role is reinforced by the record-keeping obligations.

(v) The amendments made in 2015 by sections 55A and 55B further reinforce this position. They reflect what was implicit, namely that sub-contracting may take place subject to certain geographical restrictions (imposed by caselaw but relaxed by this amendment). Sub-section (2) states it is immaterial whether or not sub-contracting is permitted by the contract between the person licensed under section 55 who accepted the booking and the person who made the booking, indicating this is an unavoidable statutory regulatory imposition. This sub-section is premised on the notion that there is in any event a contract between the operator who accepted the booking and the passenger or the "*person who made the booking*".

(vi) Given that in order to be an operator, a licence under section 55 is required, and given that the operation of sections 55 and 56 pre-suppose and/or create a contractual relationship between the accepting operator and the passenger, no matter what the model of provision of vehicle, it is inescapable that in every case an operator *must* have this relationship. That is to say that without a contract between the passenger and the accepting operator as principal the arrangement is operating outwith the regulatory framework.

(vii) The 1976 Act places an irremovable burden on the accepting operator. Section 55B, added by amendment, refers to the disposition of criminal liability as between the accepting operator ("the first operator") and the sub-contracted operator ("the second operator"). The section ensures that the first operator is only subject to criminal liability with knowledge, and reflects the primary operator's responsibility to reassure itself of the adequacy of any third parties who carry out the provision of the journey whose booking it has accepted from the passenger/hirer. This construction clearly serves a public protection statutory purpose.

(ii) Assistance from the 1998 Act and the caselaw and other materials

66. The 1998 Act does, as submitted by UBL, constitute a meaningful comparator to the 1976 Act and, consequently, the analysis in the *ULL* case of the operator obligations under that Act are of assistance and carry over into a construction of the 1976 Act; particularly:

i) The definition of PHV in section 1 of the 1998 Act is materially similar to the section 80 definition under the 1976 Act. Both connote provision of "vehicle with services of a driver".

ii) "Operate" in section 1(1)(c) is materially to the same effect in that, under the 1998 Act, an operator requires an operating centre from which to operate – equivalent to an operator operating "in the course of business" under section 80 of the 1976 Act.

iii) Section 1(3)(b), (c) and (d), record keeping obligations, reflect sections 56(2) and (3) under the 1976 Act.

iv) Section 5 reflects the centrality of the agreement between the accepting operator and the hirer, and underlines that only an "operator" may accept a booking – whether directly from the hirer, or indirectly as sub-contracting operator. Section 5(4), stating the immateriality to the analysis of any prohibition on subcontracting is very similar to section 55A(2) of the 1976 Act. The sections keep an original agreement in place (subject to other arrangements) even where there has been delegation to another operator, who has accepted that booking. In the 1976 Act these protections are effected by section 56, and sub-sections 55A and 55B.

67. There is nothing inconsistent in the manner in which the two Acts have been construed in the caselaw that suggests the interpretation placed by the Claimants is wrong. In the *ULL* case it was submitted (then by ULL) unsuccessfully that the 1998 Act did not purport to regulate any private law relationships – i.e. to require that there was a contract as principal entered by the accepting operator with the passenger/hirer. It was also submitted by another minicab service, Free Now, that because regulatory obligations were placed on the drivers and on the vehicles, there was no need to spell out the contract. The Court rejected these submissions holding at paragraph [28] of that case (see paragraph 38 above) that the 1998 Act contemplates a contract entered as principal, by the operator accepting the passenger/hirer's booking. The Court relied in reaching this conclusion upon section 4 of the 1998 Act, which shows the operator carries out the booking, likewise section 5, which refers to the relationship between the first and second operator and the contract "*for the hire of a vehicle to undertake a journey*".

68. The Court referred to section 56 of the 1976 Act as being to like effect - Parliament intended that the operator should undertake contractual responsibility. Issue is taken in the present case as to the extent to which the Divisional Court was there stating that section 56 had, by its deeming provision, any wider effect than as a reflection of the draughtsman's recognition of the centrality of the operator's liability as principal. In my judgement the Court was there simply reflecting the position, as to which I agree, that it was to make the position under the Act clear.

69. When considering whether the 1998 Act *required* such a structure rather than merely "contemplating" or "reflecting" it, the Divisional Court in the *ULL* case at [30] determined that the statutory purpose was public safety and it did so require: on the basis of obvious interests: the vulnerability of the passenger, with examples of booking a car late at night, the car not turning up and the need for recourse against a person, legal or natural, with whom one had originally made the contact. The fact that a claim against a driver might well be worthless was relevant as was the fact that the

responsibility was likely to be a powerful incentive to operators to ensure as best they could the quality of the drivers and vehicles used. The argument by Sefton that an operator could also go bankrupt, so nothing was certain, is nothing to the point which is based on economic likelihood and common sense.

70. Given the similarities of context and statutory intention between the two Acts (as explained by the Courts) the findings of the *ULL* case must read over directly to the present situation.

71. It follows that I do not accept as was suggested by Mr Holland for Sefton, that the case of *Windsor & Maidenhead RBC v Khan* (1994) RTR 87 produces any impediment to the preferred analysis above. In that case McCullough J with whom Leggatt LJ agreed, indicated that the licensing area where the seat of the operator's business was situated, was the area within which he "operated" under the 1976 Act. Arguments were sought to be made as to contractual offer and acceptance and the place where advertising was circulated. The Court, in rejecting the prosecutor's appeal by case stated said however:

"*The considerations to which I have already referred make clear that, in its definition of the word 'operate', Parliament was not referring to places which invitations might reach, but to places where provision is made for the invitation of bookings. Put an advertisement in a local newspaper in one part of England and it may be read in almost any other part of the country. The defendant made provision for the invitation of bookings at his office in Slough. What he did by advertising in the directories circulating in the area where he conducted his business, and in adjacent areas, was to inform the public that he had made such provision. His provision was nevertheless made in Slough, not in Maidenhead, nor in any of the other areas in which those directories circulate.*"

72. There were no arguments in that case that the "acceptance" of significance was that of the operator himself – which was necessarily, also outside the relevant area. That case considered the place where the customer received notice of acceptance to be irrelevant; in the present case the result would be the same – albeit the more sophisticated argument canvassed in cases subsequent to *Khan* was not raised there. Further, it was said in the *ULL* case (at paragraph [33]) that *Khan*, as well as the early case of *Kingston upon Hull v Wilson*, The Times 25 July 1995 to like effect, did not affect their clear decision that in order to operate lawfully under the 1998 Act, an operator must undertake a contractual obligation to passengers. They said *Khan* and *Wilson* were cases where:

"33. … *the court was concerned to avoid technical arguments about where a contract is concluded when a series of telephone conversations take place between persons in different areas: jurisdictional issues aside, such questions are only rarely of any practical significance.*"

73. Arguments that the concept of acceptance of a booking is not implicit in the 1976 Act I also reject. As is set out in paragraph 32 above, Hickinbottom LJ in *Skyline* approved the words of Dyson J in *Powers* to this effect:

" *...by section 56(1), for the purposes of Part II of the 1976 Act, every contract for the hire of a private hire vehicle is deemed to be made with the operator who accepts the booking for that vehicle whether or not he himself provides the vehicle.*"

It is clear that to operate a PHV includes the concept of accepting the booking. If you do not do that you are not in fact an operator under the Act. The 1976 Act only ever refers to the licensed operator as accepting bookings: see sections 55A(1); 55A(2); 55B(1); 55B(2), 56(1) and 56(2).

74. I reject also the argument that referred to the placing of a contractual obligation as principal upon the operator as just a regulatory mechanism that merely "makes the booking traceable" without having any effect upon contractual relations at all. The "merely regulatory" argument was also rejected in the *ULL* case.

75. There is no doubt that the drafting, in particular of the 1976 Act, is somewhat obscure. However, the propositions above are tolerably clear on the plain wording of the Act itself. What was implicit in the 1976 Act is made explicit by the 2015 amendments of sections 55A and 55B. It is curious that the 1976 Act, before amendment, does not refer in terms to the initial "*contract*". But section 55A, added by amendment, by sub-section (2) refers to "*the contract between the person licensed under section 55 who accepted the booking and the person who made the booking*". This reflects however the inevitable characterisation of the relationship under the 1976 Act which was not stated in terms. Inviting and accepting a booking inevitably in my judgement connote the formation of a contract with the passenger. Section 56 is premised on such an intention within the Act.

76. Were the meaning of the 1976 Act *not* clear, which in my judgement it is, particularly when read with the 1998 Act, then support may readily be taken from the wider context.

77. The Report of the Departmental Committee on the London Taxicab Trade, presented to Parliament October 1970 ("The Maxwell Stamp Report") is an illuminating document in that it was plainly underpinned by considerations of public safety (see the Terms of Reference), but mindful of a need not to curtail unnecessarily the businesses that had grown rapidly, it advocated light touch regulation (ibid.). It envisaged that hire cars or mini cabs (i.e. not taxis/hackney cabs) would be subject to a scheme in which booking was effected only through a registered office and not direct with a driver (paragraph 6.3). Paragraph 9 of the report suggests a framework that is to a large extent, although not entirely, reproduced in the 1976 Act – namely the "triple lock" licensing regime, the obligation upon operators (and it was suggested though not enacted, drivers) to enter particulars of the transactions in a log, the definition of a PHV which connotes hire of the vehicle together with the services of the driver.

78. Passages with resonance include:

" *... 9.6 We considered whether it was in fact necessary to license hire car "operators", but came to the conclusion that it was essential to do so. In the private hire business the operator (and not the driver) is the person with whom the hirer makes his contract and it is surely right that he should be held to have an overall responsibility for the way in which that contract is carried out, whether or not he owns the particular vehicle or employs the particular driver used. The person who would stand to lose most from withdrawal of his licence is not the habitual user of a particular vehicle, nor the individual driver, but the operator. If, as we propose, every operator had to be licensed and was at risk of losing his licence if he failed (in ways which we shall spell out in*

more detail later) to ensure that proper standards were maintained, there is in our view much more likelihood that the scheme of control would prove effective and enforceable than if only the driver and the vehicle's owner were subject to control."

and

"*9.8 One problem which arose in connection with the proposal to control operators was that of deciding what should be done about the situation where one operator accepts a booking and then arranges for another to provide the vehicle. This is apparently common practice nowadays, groups of firms having reciprocal arrangements to pass on business which they themselves cannot handle. This has economic advantages and provides the public with a useful service. But it may mean that the customer could be in some doubt about who provided the car and against whom he should seek any remedy; ...*

9.9 We do not wish to put a stop to the useful practice of arranging for another operator to provide a car in order to avoid losing a customer. But the operator who passes on a booking ought no longer be able to do so without having to accept full responsibility for the standard of service provided. We therefore recommend that the scheme of control should include a provision to the effect that where an operator himself undertakes to arrange for a vehicle to be provided, whether by himself or by another operator, the hirer's contract is to be deemed to be with the original operator and the fare - to be chargeable on his normal basis.

..."

79. UBL submitted and I accept that the Report constituted the informed basis for the 1976 Act.

80. I am not persuaded that the issue of public safety is a weak purpose and of little use for the construing of the 1976 Act. Veezu and Delta suggested the licensing mechanism and the requirement for insurance were adequate protections, and there was no drive to construe the provisions as UBL argued. Such measures in my view are, as noted by ADCU, *ex post facto* remedies and are no substitute: one may not insure against criminal acts. Furthermore such provision does nothing to raise standards; it is not precautionary. Thus, without such a direct responsibility placed upon operators, there is less likelihood that drivers will be trained or their performance managed: it conduces to better standards and public safety which serves the purpose of the 1976, as the 1998 Act. These were the submissions of ADCU; I agree.

(iii) Policy and/or undesirable practical consequences or defeat of the public interest

81. UBL pointed in submissions to the particular sensitivity of booking information conveyed by a hirer. It may reveal the dates of a holiday or other departure, with the inference of empty and vulnerable property, hirers may themselves be vulnerable. Such passengers are best protected, as The Maxwell Stamp Report recognised, by the imposition of responsibility upon the operator as:

" *… the person with whom the hirer makes his contract and it is surely right that he should be held to have an overall responsibility for the way in which that contract is*

carried out, whether or not he owns the particular vehicle or employs the particular driver used." (See above.)

82. This is a strong rationale for the construction advanced by UBL. This aspect of public protection, including safety, may necessitate a choice by providers of services, and may require that certain types of service model are no longer capable of operation under the statute, but that change is not so surprising nor so stark as to condition the approach to construing the provisions as Sefton suggested, or Veezu and Delta argued. The statutory purpose of the 1976 Act is established, along with that of the 1998 Act, as being public protection. Again, I do not accept that a diminution of the PHV market would constrain a construction of the 1976 Act against what I read as the strong guidance of *Aslam* and the *ULL* case in respect of the 1998 Act.

83. Further, as submitted by ADCU, the arguments are not all one way. There is considerable strength in the view that a properly regulated and remunerated pool of drivers is a benefit to public safety. It is clear also from The Maxwell Stamp Report that the agency driver model was deprecated by the Committee. ADCU advanced a series of compelling arguments to the effect that drivers' working conditions may well improve as a result since they would at least in some circumstances, be recognised as workers with working time, sick pay and minimum wage rights. ADCU did not accept that since the old style agency model was the backdrop to the 1976 Act, it determined its interpretation: they point to the fact that Maxwell Stamp suggested reform. I agree. I am clear that the wording the 1976 Act supports UBL's interpretation in any event. I am fortified by relevant caselaw and there is nothing that persuades me the 1976 Act intended the preservation of an agency-type model: on the contrary, for the reasons given.

84. I note from figures put before the courts on behalf of ADCU and submissions by UBL that in fact at the time of the 1998 Act, in London about 25% of market share was occupied by the minicab trade. More recently, and following the decision on the 1998 Act in the *ULL* case, there had it appeared, been no dramatic fall off of numbers (accepting that the pandemic has distorted the picture). However, I do not decide the case on this basis. For the reasons given, the decision is based upon construing the wording in light of the statutory purpose, (see *Barclays Mercantile Business Finance Limited v Mawson* [2005] 1 AC 634, (and others), as, above Lord Leggatt in *Aslam* (paragraph 44 above)).

85. The VAT consequences for those who will wish to change their operating model are in my judgement irrelevant. They do not condition the reading of the provisions, it could never be said that a change in the taxation position is an absurd consequence the draughtsman could never have contemplated would result and did not intend. It, together with certain postulated economic consequences do not have relevance to the exercise of statutory construction before the Court. Nor indeed, as was canvassed in argument, is it wholly impossible that any consequent change by way of increase to fares because of an element of taxation would necessarily be passed on to the customer.

86. Accordingly, I am not persuaded by the arguments in opposition to the position taken by UBL and ADCU.

87. For all these reasons the application for a declaration succeeds.