



Transport for London

**CONFIDENTIAL**

From: Graham Robinson, General Manager, Taxi and Private Hire

To: Helen Chapman, Director of Licensing, Regulation and Charging

Subject: **UBER LONDON LIMITED – RENEWAL OF PHV OPERATOR’S LICENCE**

Date: 25 November 2019

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## **1. INTRODUCTION AND BACKGROUND**

1. On 3 July 2019, Uber London Limited ('ULL') applied to renew its PHV operator's licence for a period of 5 years (Appendix 19).
2. ULL's previous licence was granted for 15 months by the Chief Magistrate, in June 2018, following ULL's appeal against TfL's refusal (in September 2017) of a previous licence application. TfL has engaged in correspondence with ULL since it was granted a PHV operator's licence by the Chief Magistrate in June 2018 about its operations, and in relation to the various notifications it has provided to TfL in compliance with its conditions.
3. At the time of expiry of the licence on 25 September 2019, there were two issues that TfL was still actively considering and unable to resolve. It considered that those matters were "*sufficiently substantial, and sufficiently uncertain at the current time, that a licence of two months' duration should be granted*". Those issues – in respect of which TfL was not in possession of sufficient material to reach a secure conclusion - were:
  - a) There had been a number of cases of fraud in which drivers manipulated settings on their device to upload their photograph as the profile picture

on another driver's account, enabling them to take trips on that account (referred to in this Note as 'the driver photo fraud issue'). TfL wished to find out more about precisely how many such incidents there were and to understand more fully why they had occurred, and

- b) An allegation made by the London Cab Drivers' Club ('LCDC') (and other third parties) that Uber Britannia Limited ('UBL') and ULL are unlawfully making provision for the invitation and acceptance of non-London bookings, and accepting bookings, at ULL's offices in London, in breach of the Local Government (Miscellaneous Provisions) Act 1976.
4. In relation to (a), the driver photo fraud issue, at the time of the expiry of the licence on 25 September 2019, ULL was continuing to investigate the root causes and TfL was still not in a position to fully understand the scope of this issue, its cause, or the consequences that flowed from it.
  5. In relation to (b), the LCDC's allegations about UBL and ULL's operations, TfL had put those allegations to ULL, and received a response, but did not have the LCDC's views on ULL's letter as to the lawfulness of ULL's operations.
  6. TfL recognised that there would always be matters that are outstanding, when taking a complex decision of this kind. Nonetheless, on 24 September 2019, TfL decided that ULL should be granted a licence for two months, subject to a number of conditions including those imposed by the Chief Magistrate which TfL considered were still valid and six new conditions that TfL considered necessary to ensure passenger safety (Appendix 29). TfL considered that the matters set out above were sufficiently substantial, and sufficiently uncertain at that time, that a licence of two months' duration should be granted. TfL wished to consider these important issues in the round, alongside all the relevant material concerning ULL's fitness and propriety to hold a PHV operators' licence in London. The current PHV operator's licence expires on 25 November 2019.

7. Since the 24 September 2019 decision to grant a licence to ULL, TfL has met with and corresponded with ULL about the driver photo fraud issue and the drivers involved. ULL has concluded its investigation into the root cause of the driver photo fraud issue and reported back to TfL.
8. The driver photo fraud issue was one of a number of issues that have arisen since the Chief Magistrate granted a licence to ULL, which together raised doubts for TfL concerning the overall vulnerability of ULL's systems to fraudulent exploitation or manipulation. TfL is aware of a number of examples of drivers being able to exploit vulnerabilities in ULL's systems as a consequence of changes that have been introduced that have generated unintended vulnerabilities or loopholes. As a result, during the two-month licence, TfL decided to undertake a technical review of ULL's approach to cyber security and IT service management processes (in particular in relation to software changes and upgrades). The purpose of that review was to seek reassurance that ULL's systems and service management processes were sufficiently robust and reliable. TfL appointed Cognizant Worldwide Limited ('Cognizant'), recognised specialists in this field, to carry out this technical review. TfL developed Terms of Reference (see Appendix 33) for the technical review and provided a copy of these to ULL. Cognizant has provided its report to TfL. That report has deepened TfL's understanding of the strengths and weaknesses of ULL's systems and processes and has been taken into account in making the recommendations as to ULL's fitness and propriety to hold a PHV operator's licence.
9. On 8 November 2019, ULL made a further application for a PHV operator's licence (Appendix 32). This Note sets out recommendations to TfL in relation to that application.
10. For the reasons set out in this Note, it is recommended that TfL concludes ULL is not a fit and proper person to hold a licence and that ULL's PHV operator's licence should not be renewed on 25 November 2019.
11. Consideration has been given to whether the matters that go to ULL's fitness and propriety could be addressed through licence conditions and/or new

Regulations, or amendments to existing Regulations, which are applicable to the PHV trade generally. However, as elaborated below, the matters concerned with ULL's fitness are specific to ULL and for that reason it is not considered that they can be appropriately dealt with by way of Regulations applicable to the whole trade. It is also not considered that the concerns about ULL's conduct detailed in this Note, which bear on the question of fitness, can be adequately addressed through licence conditions.

12. In summary, it is recommended that TfL does not grant ULL a new licence, on the grounds that it is not currently fit and proper to hold a PHV operator's licence for the following reasons:
  - a) TfL recognises that ULL has made a significant number of positive changes and improvements to its culture, leadership and systems in the period since the Chief Magistrate granted ULL a licence in June 2018. In particular, ULL now corresponds with TfL in a transparent and productive manner and has built up positive relationships with the Metropolitan Police (amongst other bodies). ULL has passed its compliance inspections and it has adopted Programme ZERO: a programme designed to drive incidents of ULL's regulatory non-compliance down to zero. All the positive matters set out above have been carefully considered and taken account of in the recommendations in this Note.
  - b) On the other hand, in the period since June 2018, ULL has reported a number of regulatory breaches to TfL. Some, indeed many, of those breaches have been extremely serious in nature. By way of example:
    - i. Some of those breaches have concerned cases in which drivers were providing PHV services without hire and reward insurance in place. Some of those cases led to ULL pleading guilty to the criminal charge of causing or permitting drivers to use vehicles on a public road for hire and reward without the requisite motor vehicle insurance policy. This is a particularly serious public safety issue. The risks to the public of uninsured drivers, offering uninsured services, are grave and acute.

- ii. Some of those breaches have concerned cases in which individuals were providing PHV services, via the Uber app, using another driver's login. Put simply, the individual in the car was not who they should have been. Once again, this raises important safety concerns because all of the drivers involved have engaged in fraudulent activity and therefore would not be considered fit and proper to hold a private hire driver licence in London. ULL has identified most of those individuals following several audits. Of those, a number had been suspended or dismissed by ULL and one had previously been licensed as a PHV driver, but had their licence revoked. In one case, it has not been possible to identify who was driving the car at the relevant time. For obvious reasons, once again, this raises substantial public safety concerns: the services might have been provided by an individual with a serious criminal record or a medical issue and/or whose DVLA driving licence, or PHV driving licence has been revoked. The risks arising to the public are serious and substantial.
- c) These breaches have derived, at least in part, from changes to the Uber systems and the Uber driver app, which have then been exploited by drivers. Others are the consequence of human error. ULL has taken a number of steps to address these breaches and the number of those incidents is currently falling. This progress has been taken into account.
- d) However, these breaches raised serious doubts as to whether TfL could have sufficient confidence in ULL's ability to prevent breaches of this kind – and indeed wholly new breaches that have never occurred previously – recurring. In particular, the breaches raised concerns as to ULL's systems and processes because, at least in part, they have derived from changes or modifications to ULL's systems that have left them vulnerable to exploitation.
- e) ULL's biannual Assurance Reports have provided some assistance in assessing ULL's ability to prevent similar breaches arising in future.

Although these reports are improving, TfL has – in certain respects - found them less useful than they might have been. In the recent past, at least, those reports have failed to recognise the importance of some of the breaches that have occurred and the risks that flow from them, from the point of view of both passengers and TfL. The assurance reports alone were not sufficient to provide the necessary confidence in ULL's systems.

- f) As a result of its lack of confidence in ULL's ability to prevent new incidents of this kind occurring, TfL commissioned two reports by Cognizant. TfL commissioned those reports in order to understand whether ULL's processes, change management and cyber security were at or above industry standard, for a company in ULL's position, which would have provided reassurance as to ULL's fitness and propriety to hold a PHV operator's licence.
- g) Cognizant's report into ULL's cyber security systems concluded that they were at or above the standard that Cognizant would expect, although it identified some weaknesses. This provides a significant degree of comfort in that area.
- h) However, the Cognizant report into ULL's IT Service Management rated ULL as below the standard that would be expected of a company in its position, in certain important respects. ULL responded to that report by way of a letter and at a meeting with Cognizant and TfL, suggesting why they considered the report was: (i) factually flawed and (ii) not an appropriate means by which to assess ULL's systems in any event. Cognizant has responded to ULL's comments and stated that they have not caused it to change its views.
- i) Unfortunately, as a consequence, the Cognizant reports did not provide sufficient confidence in ULL's systems and processes and, in particular, that those systems and processes are currently sufficiently robust to ensure that the kinds of serious breaches described above will not recur.

- j) In all these circumstances, it is recommended that TfL concludes that ULL is not a fit and proper person to hold a PHV operator's licence.
13. For obvious reasons, it is not possible to record every item of correspondence and evidence received by TfL, concerning all matters that are relevant to ULL's fitness and propriety to hold a PHV operator's licence. However, all of the relevant correspondence and other documents have been considered, and certain key material is attached to this Note. This Note summarises that material and explains the recommendations that are set out in this Note. In any event, the underlying issues are familiar to those making the recommendations and making the decisions, acting under delegated authority, have read the majority (or all) of the relevant correspondence either at the time it was sent or in the recent past.
14. TfL has received a significant volume of submissions from third parties in recent months about the lawfulness of ULL's operating model and its fitness and propriety to hold an operator's licence. These have been carefully considered, in making the recommendations in this Note. By way of example only:
- a) The Independent Workers Union of Great Britain has provided TfL with a copy of an opinion from Queen's Counsel which concludes that it would not be appropriate for licensing authorities to impose conditions on operator licences to the effect that operators must comply with employment law but that the extent to which an operator complies with other legal requirements can in appropriate circumstances be taken into account in considering whether an operator is fit and proper to hold a license. TfL notes that the status of ULL's drivers, in relation to employment law, is subject to considerable legal uncertainty and that the matter is currently the subject of unresolved litigation in the Supreme Court. It is not therefore considered appropriate to take that matter into account.
- b) The London Cab Drivers' Club ('LCDC') have made representations on the matter identified at paragraph 3(b) above. TfL has not formed a final

view on those submissions, because: (i) they raise mixed questions of fact and law and some of the relevant factual material relates to operations outside TfL's licensed area; (ii) the issues raised concern the exercise of the powers of other licensing authorities; and (iii) TfL has not received complaints from those other authorities in relation to the specific issue raised in this correspondence. These issues will continue to be kept under review. It is accepted that they are, at least potentially, relevant to ULL's fitness and propriety. However, in view of the recommendations in this Note, it has not been necessary definitively to resolve this question at this stage.

15. To the extent that third party representations received by TfL are not addressed below, they have not been relied on in the recommendation in this Note concerning ULL's fitness and propriety.
16. ULL considers that some of the information it has provided to TfL, and reflected in this Note, is commercially sensitive. It has been provided to TfL on the basis that it will be kept strictly confidential, will not be disclosed to third parties and that TfL will consult ULL in the event that it is requested to disclose the information to any third party. As a result, this document should be treated as confidential.

## **2. BACKGROUND**

### **Relevant Legislation**

17. The Private Hire Vehicles (London) Act 1998 ("the 1988 Act") is the primary legislation that applies to the licensing of private hire vehicles, drivers and operators in London. It covers any vehicle seating eight or fewer passengers that is made available for hire with a driver to carry passengers, apart from public service vehicles and taxis (s. 1(1)). PHVs in London are subject to a regime that is distinct from black taxis or "hackney carriages" and is distinct from the regime that regulates PHVs in the rest of England and Wales, which is set out in the Local Government (Miscellaneous Provisions) Act 1976.



18. Section 2(1) of the 1998 Act provides that no person shall make provision for the invitation or acceptance of, or accept, private hire bookings unless he is the holder of a private hire vehicle operator's licence for London. A person who makes provision for the invitation or acceptance of private hire bookings, or who accepts such a booking, in contravention of section 2 of the 1998 Act is guilty of a criminal offence (s. 2(2)).
19. Section 4 of the 1998 Act provides that the holder of a London PHV operator's licence shall not in London accept a private hire booking other than at an operating centre specified in his licence. A London PHV operator that contravenes that provision is guilty of an offence (section 4(5)).
20. TfL is empowered by ss. 3, 7 and 13 (read together with s. 32(1)) of the 1998 Act to issue private hire vehicles, drivers and operators' licences and to prescribe licence conditions by way of regulations in addition to those contained in the 1998 Act.
21. The regulations that prescribe those additional licence conditions are:
  - a) for vehicle licences, the Private Hire Vehicles (London PHV Licences) Regulations 2004;
  - b) for driver's licences, the Private Hire Vehicles (London PHV Driver's Licences) Regulations 2003 ("the 2003 Regulations");
  - c) for operators' licences, the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000 (SI 2000/3146) (the "Operator's Licence Regulations")
22. The relevant regulations for the purposes of this Note are the Operators' Licences Regulations, which are amended from time to time.
23. Section 3(3) of the 1998 Act sets out the requirements that must be satisfied before TfL can (and must) grant a licence. This provides that TfL shall grant an operator's licence where it is satisfied that the applicant is a "*fit and proper person*" to hold a London PHV operator's licence.

24. 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.*” In addition, the courts have accepted that past misconduct by the licence holder is a relevant consideration to take into account in every case when considering whether to renew a licence. The weight to be accorded to past conduct will depend on the circumstances of the case.
25. TfL publishes a guide for applicants who are applying for a London PHV operator’s licence and part 4 refers to the statutory requirement that the applicant is a fit and proper person. The guide sets out the process that TfL will follow in reaching decisions on applications for operator’s licence(s). It also clarifies that TfL may impose bespoke conditions on individual licences in particular circumstances. Amongst the criteria for assessing operator’s licence applications are:
- “Section 3(3) (a) \*\* - the applicant must be a "fit and proper" person. In order to be considered as such, applicants will be expected to demonstrate that they have complied with other legal requirements connected with running a business. Failure to do so could result in the refusal of an application.”
26. The guide also sets out the other factors that TfL will consider when determining whether a person is fit and proper to hold a licence including the requirement for applicants to declare any prior convictions, bankruptcy, director disqualification orders, requirements relating to health and safety, accounts and insurance, provide proof that the operating centre complies with local planning regulations, supply evidence of their right to work and reside in the UK and provide details of any prior licence refusals, revocations or suspensions. It also explains in part 4b that part of the consideration of an operator’s licence application is an inspection of any operating centre(s)

named in the application form, and applicants must show that they comply with all of the administrative obligations listed in Part 4.

27. Section 3(5) of the 1998 Act provides that “*a London PHV operator’s licence shall be granted for five years or such shorter period as the licensing authority may consider appropriate in the circumstances of the case*”. This confers a broad discretion on TfL to decide the duration of any particular licence. The discretion must be exercised for proper and rational reasons, but there are no constraints imposed in the legislation on the kind of factors that might justify the grant of a licence for less than five years in any particular case.
28. Section 3(4) of the 1998 Act also provides a wide discretion for TfL to impose specific conditions on individual licences: “*A London PHV operator’s licence shall be granted subject to such conditions as may be prescribed and such other conditions as the licensing authority may think fit.*” Once again, Parliament has conferred a broad discretion on TfL to impose conditions on an operator’s licence, as long as those conditions are rational and otherwise lawful. An applicant for a PHV operator’s licence may appeal a decision to impose a condition on a licence to the magistrate’s court.

### **ULL’s application in 2017 and the appeal**

29. As set out above, TfL refused ULL’s application for a licence in 2017. By the time of the appeal in 2018, ULL accepted that TfL’s decision was correct. The most important elements that informed TfL’s conclusion in 2017 were:
  - a) ULL provided materially false and misleading information to TfL in 2014 and to the High Court in 2015 as to the processes by which a booking is accepted via the Uber app.
  - b) ULL had available to it for use in London a piece of software called ‘Greyball’, which had been used by some companies in the Uber group to evade regulatory enforcement. ULL said that it was not used for that purpose in London but it only became clear following extensive

correspondence that some of those individuals responsible for ULL's operations in London had been aware of its use for that purpose in other jurisdictions.

- c) ULL had shown a lack of corporate responsibility in relation to a number of issues that raised public safety implications including the reporting of safety-related complaints and attempting to circumvent TfL's licensing processes that are designed to ensure the safety of passengers. There are still residual issues that have come to TfL's attention in recent months as a result of this lack of corporate responsibility at the time. For example, at the trial of a driver on 15 October 2019 who was convicted and sentenced for a sexual assault on a passenger, TfL became aware that during the trial, the police identified that ULL had received a previous safety related complaint about the driver. TfL investigated this further in October and November 2019 and noted that ULL had received a complaint from a female passenger of inappropriate behaviour three days prior to the offence being committed. Although the offence was committed in January 2018, it is clear that ULL's prior behaviour still has an impact in 2019.
30. ULL appealed that decision and made a number of important changes to its governance and systems prior to the hearing in June 2018. The Chief Magistrate, taking all the evidence into account did not consider that TfL's decision in September 2017 was incorrect, but held that ULL was a fit and proper person at the time of the appeal and granted a licence for 15 months, subject to 14 conditions (see Appendix 2). She reached that conclusion on the basis of the changes that ULL had made between TfL's decision and the appeal hearing.
31. The licence granted by TfL to ULL in September 2019 for a period of two months was subject to conditions. Those conditions were largely the same as those that were applied by the Chief Magistrate together with further conditions that were necessary to address the issues of public safety that are discussed later in this Note. Those conditions are at [Appendix 29](#).

32. ULL's past conduct is a relevant factor that may be considered when determining whether it is now fit and proper to hold a PHV operator's licence. However, the issues that arose and were resolved prior to the Chief Magistrate's Judgment in June 2018 have not been taken into account in making the recommendation in this Note as to whether ULL is now fit and proper to hold a PHV operator's licence.

### **The current application**

33. ULL is London's largest PHV operator. As at the week commencing 4 November 2019, 107,953 individuals hold a London PHV driver's licence and of those, ULL's upload of data to TfL shows that 55,041 are ULL drivers although a number of these drivers are likely to be registered with more than one private hire operator. In its most recent Assurance Report, dated October 2019, ULL says that between 1 June and 30 September 2019, TfL licensed drivers on the Uber app took [REDACTED] trips.
34. ULL submitted a detailed application for a new PHV operator's licence on 3 July 2019 (Appendix 19). That application was supported with a covering letter from Jamie Heywood, Regional General Manager for Northern and Eastern Europe, dated 3 July 2019. The Chair of ULL's Board, Laurel Powers-Freeling, also provided a letter of support of ULL's application to TfL and wrote to the Deputy Mayor for Transport, Heidi Alexander, copied to the TfL Board in support of ULL's application. On 8 November 2019, ULL made a further application for a PHV operator's licence which included a copy of 3 July 2019 application, and identified new information (Appendix 32). It also included comments on the additional matters that have been the subject of TfL's enquiries since 25 September 2019.
35. ULL's covering letter of 3 July 2019 set out its view of its performance over the past year. It said that ULL has worked towards building TfL's trust via the changes that it has made and the commitment it has shown in integrating those changes into its culture. It said that the conditions on its licence have given it an opportunity not just to continue operating at the standard expected of a fit and proper private hire operator, but under much greater scrutiny, to

demonstrate its commitment to and culture of transparency and compliance, providing assurance that the systems, policies, procedures and oversight mechanisms necessary for promoting compliance with its obligations under the 1998 Act and its licence conditions are effective and embedded.

ULL also explains in its 3 July 2019 letter that the two Assurance Reports, submitted in December 2018 (Appendix 34) and June 2019 (Appendix 35), set out how ULL has complied with its regulatory obligations as a PHV operator, but also the additional improvements that it has made, including safety and security-related initiatives, and how these are embedded in its culture. The letter describes ULL's "*institutional commitment to, and capacity for, being a responsible operator, and of its long-term fitness and propriety to serve the needs of Londoners.*" It also refers to ULL's commitment to a programme of continuous improvement. ULL refers to the key points that it says illustrate the culture and governance that underpin ULL's fitness and propriety. It says that those are:

- a) ULL's record of compliance with its regulatory obligations (specifically the conditions) with reference to the independent assurance process;
- b) the steps that it has taken during the period to improve further as part of its programme of continuous improvement;
- c) other safety and security-related initiatives that it has implemented;
- d) the approach of the ULL Board, which is ultimately responsible for its regulatory compliance, and the findings of an independent audit of its effectiveness. Those findings provide a high level of assurance that the Board's role in providing senior-level challenge and scrutiny is working effectively and is institutionally embedded;
- e) the ways in which it has sought to provide TfL with greater transparency, including in response to TfL's feedback; and

- f) various initiatives, which demonstrate ULL's wider contribution to London as a trusted partner to the city.
36. The 3 July 2019 letter also summarises ULL's views concerning its compliance with the 14 conditions that were imposed by the Chief Magistrate on the current licence, as well as details on the governance processes that ULL has established.
37. On 24 November 2019 (see Appendix 55), the CEO of Uber, Dara Khosrowshahi, wrote to TfL's Commissioner, Mike Brown, in support of ULL's PHV operator's licence application. Mr Khosrowshahi referred to the commitment he gave in September 2017 that Uber would do everything in its power to be a better partner to London and the commitment to be more transparent, regain TfL's trust and put safety at the heart of all Uber does. He referred to working closely with TfL and the Metropolitan Police to ensure robust reporting procedures, set up Programme ZERO to embed a culture of zero tolerance for compliance errors, and rolled out new safety features.
38. Mr Khosrowshahi said in his letter that a business of Uber's size can never entirely eliminate safety incidents but recognised that Uber has a duty to make them as rare as possible. He said he was confident there are stringent standards in place at Uber to ensure safety issues are dealt with seriously and swiftly, as evidenced in the latest Assurance Report. He said that Uber will keep improving the service provided to people across London and the drivers using its platform. He said that Uber remains committed to fulfilling its pledges as signatories to the Mayor's Women's Night Safety Charter and further educating drivers and passengers through its partnership with The AA, Barnardo's and UK SAYS NO MORE. This has been taken into account in the recommendations in this Note.

## **THE STRUCTURE OF THIS NOTE**

39. This Note summarises the relevant material in the following order:

- a) Those matters which suggest that ULL is now fit and proper to hold a PHV operator's licence. The factors that could be capable of supporting a conclusion that ULL is a fit and proper person have been carefully considered and taken into account in the recommendation in this Note.
- b) Those matters that have led to the recommendation to TfL to determine that ULL is not currently a fit and proper person to hold a PHV operator's licence. This part of the Note includes the material that has become available to TfL in the period since the grant of the 2-month licence in September 2019.

#### **4. POSITIVE FACTORS THAT SUPPORT ULL'S APPLICATION**

##### **(a) Transparency and communication with TfL**

39. Since June 2018, ULL has written to TfL about a number of matters concerning its operations, in compliance with conditions 5, 7, 8, 11 and 12 imposed by the Chief Magistrate following the hearing in 2018. Over this period, TfL has also written to ULL and raised several issues that have come to its attention via the press, from passenger complaints, or third party representations. TfL has met with ULL approximately every quarter since June 2018 to discuss ULL's operations and various compliance issues that have arisen. Where appropriate, TfL has also met with ULL on an ad-hoc basis to discuss specific issues and concerns and to seek ULL's comments.
40. As mentioned above, TfL does not set out the full extent of all of its correspondence with ULL in this Note and, in any event, those making the recommendations in this Note and the decision about ULL's application, (acting under delegated authority) are familiar with it. Nor is it necessary to do so in order to set out the reasons for the recommendations in this Note. However, all of the relevant material has been reviewed when preparing this Note and some of the key documents are also attached to this Note.



41. The overall tone and content of the correspondence from ULL, since the Chief Magistrate's decision, has been productive and, in the main, transparent. ULL has demonstrated its commitment to finding ways to address issues and concerns raised by TfL. ULL has also apologised to TfL for any areas in which it has failed to properly escalate issues and has also acknowledged the legitimacy of TfL's concerns. As is expected from a regulated entity, the overall tone of ULL's correspondence has been respectful to TfL as its regulator. These points are not usually something that TfL pays attention to when determining if an operator is a fit and proper person, but this is relevant for ULL because its historic practice was to correspond with TfL in a dismissive or cursory manner.

**(b) Reporting driver behaviour and police engagement**

42. One of TfL's concerns, when refusing ULL's licence in 2017, was ULL's failure to report serious driver misconduct (including in some cases criminal behaviour) to the police. At TfL's request, prior to the June 2018 hearing, ULL carried out a review of historic complaints that had been brought in respect of driver behaviour, in order to determine whether they should be referred to the police.
43. Shortly before the licensing appeal, TfL wrote to ULL about the historic complaints review and asked about cases that were outside of the Metropolitan Police Service's ("MPS") jurisdiction. In a letter dated 22 June 2018 (see Appendix 1), ULL provided an update on that review. It referred to 18 cases that fell within the jurisdiction of seven different police authorities and confirmed that it had contacted all of those relevant authorities. At that time, it stated that it was in discussions with the relevant police authorities as to what further steps they wanted ULL to take.
44. ULL's historic complaints review was also discussed at a regulatory meeting on 14 November 2018 between TfL and ULL. In its letter of 7 February 2019, TfL asked ULL to provide an update on the discussions it had with the police authorities outside of London about the 18 cases and whether the drivers concerned remained ULL drivers (see Appendix 13). TfL also asked for an

update on the progress of agreeing an approach to reporting allegations of criminal behaviour with police authorities outside London.

45. In an update of 22 February 2019, ULL stated that it had now put in place a comprehensive crime reporting process underpinned by dedicated staff to ensure accurate, timely reporting of allegations to the police each week (see Appendix 14). ULL said that it had reported each of the 18 drivers to the relevant police forces but only received a request for further driver details from one of them. It confirmed that each of these 18 drivers had their access to the app permanently revoked and had submitted a driver dismissal notification (PHV105 form) to TfL.
46. ULL also explained the work it has done with the Metropolitan police and British Transport Police (BTP):
  - a) Metropolitan Police's intelligence unit has access to ULL's 24/7 Law Enforcement Response Team and portal;
  - b) The Head of the Metropolitan Police Taxi and Private Hire Unit intended to share ULL's approach to reporting with the College of Policing, which would help inform a national reporting protocol for taxi and private hire operators;
  - c) Carried out work with the police in relation to counter-terrorism and preventing modern day slavery;
  - d) BTP wanted to work more closely with Uber in the future.
47. On 6 September 2019, ULL provided a further update on its relationships and arrangements with police forces outside of London (see Appendix 27a) and said:
  - a) Feedback was awaited from the Head of the Metropolitan Police Taxi and Private Hire Unit and the College of Policing with regards to rolling out an approach to police reporting across the UK;

- b) Commitment from the Home Office to implement the national 'Single Online Home' across the country enabling efficient reporting of potential crimes in a structured and consistent manner to forces across the UK.
  - c) Established and trained a single point of contact and rolled out its 24/7 Portal to 36 of the 45 forces in the UK.
  - d) Recruiting a second dedicated police liaison officer to provide greater support to the police as this process is rolled out.
48. ULL notified TfL on 11 September 2019, that Chief Constable Mark Collins had been appointed the Uber UK Liaison, a role in which he will act on behalf of Police Chiefs nationally in a number of ways, including helping to direct and set the strategic areas Uber should focus on nationally, advising and guiding on how ULL's Law Enforcement Response Team should engage with UK police forces and act as a point of contact for Uber, escalating any national policing concerns to ULL and also helping it coordinate and roll out initiatives across the country (see Appendix 27b).
49. On 21 November 2019, ULL provided TfL with the notes of a meeting it had held with the MPS on the 7 November 2019 (see Appendix 50). This highlighted the ongoing working relationship between ULL and the MPS. The notes record a discussion about the progress of ULL's reporting arrangements to the MPS. The notes of the discussion show that there were no issues from a policing perspective with ULL.
50. Overall, it is clear that ULL has committed significant resources into ensuring that it has a good ongoing relationship with the Metropolitan Police. It is also evident that ULL has also sought to expand its relationship with other police and criminal enforcement agencies to assist in the prevention of crime related to trips undertaken by ULL drivers or passengers. This is important work and shows a commitment by ULL to the personal safety of its passengers and drivers that was previously lacking at the time of TfL's 2017 decision.

### (c) Data management

51. ULL has explained in correspondence the approach that every Uber group company, including ULL, takes to the protection of passengers' and drivers' data and has affirmed that this issue is treated with the utmost seriousness. Uber Technologies Inc. ('UTI') has appointed a Chief Privacy Officer and the Uber Group has developed six principles for handling data, as well as put other resources and arrangements in place to support its culture and commitment towards protecting personal data.
52. In accordance with its conditions, ULL has notified TfL of potential data breaches in relation to:
- a) A third party contractor called Typeform. On 2 July 2018 (Appendix 3) ULL informed TfL of a passenger and driver data breach at Typeform (which lasted no longer than 30 minutes). The matter was escalated to the ULL executive directors and Uber BV Privacy Legal team that day. Typeform notified the ICO and data authorities in the Netherlands immediately.
  - b) Another third party contractor called SparkPost. On 16 November 2018 (see Appendix 9), ULL notified TfL that 'SparkPost' had inadvertently sent email address data concerning Uber users to other customer(s) of theirs (the incident occurred due to a technical error on 18 October 2018). SparkPost confirmed that the customer who received that data has confirmed that it has been deleted.
  - c) On 11 December 2018, ULL's app phone number anonymisation suffered a system outage for two hours. As a result, the personal telephone details of a driver were provided to a passenger and the passenger's details were available to the driver. ULL informed TfL of this on 14 December 2018 (see Appendix 11). This matter was considered by ULL's Licensed Operations Management Committee ('LOMC') on 11 December 2018. ULL later confirmed that investigations to date indicated that no data breach had occurred.

- d) On 24 August 2018 (see Appendix 5), ULL notified TfL of a police investigation that had been carried out by West Midlands Police concerning a suspect who had compromised the accounts of thousands of customers of a wide range of international companies, including Uber. The police confirmed that the emails and passwords had been sourced from the internet and not Uber's systems. It said that it checked the information that the police had available and confirmed to the police that there had been no data breach of Uber's systems. The police confirmed that they did not require further support or involvement from Uber in relation to this case.
53. Earlier in 2019, TfL challenged ULL about its engagement with the Information Commissioner's Office (ICO), because following notifications of the above incidents, we were not confident that the proper approach had been taken to engaging with the ICO about any potential breaches. TfL wanted to be confident that ULL was fully and transparently engaging with the ICO in appropriate cases. TfL's concerns arise from a previous 2016 data protection breach where Uber (not ULL) did not report itself to the relevant data protection authorities and instead paid money to the hacker (paragraph 55).
54. ULL wrote to TfL on 17 May 2019 about its engagement with the ICO and the Dutch Data Protection Authority (DDPA) on issues that may potentially amount to data breaches (see Appendix 15). In the course of correspondence, ULL confirmed that:
- a) It had sought the ICO's assurance that its data policies, practices and conduct are consistent with their best practices;
  - b) The ICO's position is that the onus is on the third party to determine whether or not a breach has occurred, and the ICO provide support to third parties in making self-evaluations, including the decision-tree that should be used to determine whether or not there has been a data breach;

- c) It has established lines of communication to the ICO and DPPA;
  - d) It raised TfL's comments with the ULL Board and at the Board meeting on 25 April 2019, it was noted that Uber's Data Protection Officer would continue to engage in dialogue with the ICO.
55. In its evidence to the Chief Magistrate in June 2018, TfL referred to the data breach of Uber's systems in 2016. TfL was given notification of the breach in November 2017, and it later emerged that over 2.5 million ULL accounts had been compromised (both customer and driver), and that Uber paid the hackers \$100,000 to secure the return of the data in 2016. The data breach had been reported to the DDPA and the ICO, which were investigating the breach. TfL made clear to the Chief Magistrate in June 2018 that it had concerns about this breach (in particular its size) and ULL's response to it.
55. In September 2018, TfL became aware, through the press, that a settlement had been reached in the US between Uber and the attorney generals for \$148 million in relation to the 2016 data breach (see Appendix 6). TfL was disappointed that ULL had not given notification of this before it appeared in the press. ULL apologised for not providing prior notification to TfL.
56. On 26 November 2018, ULL told TfL that the ICO would be publishing a monetary penalty notice, including a fine totalling £385,000 against Uber's UK businesses (Uber London Ltd, Uber Britannia Ltd, Uber Scot Ltd and Uber NIR Ltd) and Uber BV citing a serious contravention of the seventh data protection principle (see Appendix 10). The email also said that ULL was informed that the DDPA would be announcing the conclusion of its investigation and issue a fine of €600,000 against Uber BV and Uber Technologies Inc. (UTI) for violating the Dutch data breach regulations.
57. ULL confirmed that the ULL Board was notified of the level of the fine imposed by the ICO and the publication of the MPN on the day prior to it becoming public. The Board has not agreed to take any new steps as a result of the MPN, due to the work on data security and privacy which has already been undertaken on a global basis since the 2016 data breach was exposed,

including termination of employment of individuals responsible for concealing the breach, improvements in security systems and new data security processes introduced. ULL fully accepted the fines imposed by the ICO, by the DDPa and the US which reflect the severity of the issue and said that it has been open in its criticism of the handling of the breach.

58. TfL recognises the extensive work that Uber BV, UTI and ULL have done over the last couple of years since the 2016 data breach came to light. There has been significant change to processes and personnel to ensure that a similar incident does not happen again, and to ensure that there are clear and strict governance arrangements in place around this area. There is a clear shift in approach to these types of issues and an appropriate emphasis on ensuring the data of its passengers and drivers is afforded a high level of protection.
59. This view is reinforced by Cognizant's findings that ULL's systems and processes with regard to vulnerability management, network security, cyber security risk management and security incident management were at or above the standard that Cognizant would expect of a company in ULL's position.

#### **(d) ULL's operating model and technical review**

60. In 2017, TfL wrote to ULL about its operating model because it was not satisfied that ULL was accepting bookings at its licensed operating premises in London, and said that it was minded to conclude that ULL's business model did not comply with section 2 of the 1998 Act. In response, ULL made changes to its operating model and reconfigured the Uber App in order to improve transparency and demonstrate even more fully that it is accepting bookings.
61. In its 3 July 2019 application for a London PHV operator's licence, ULL provided TfL with a detailed description of the way in which its operating model worked, and its November 2019 application confirmed that there were no changes to this information. As it had done in 2018, TfL asked Deloitte

UK to visit ULL and produce a report showing the processes for bookings and cancellation of bookings in order to inform its conclusions concerning whether or not those systems still comply with the 1998 Act.

62. Deloitte UK visited ULL on 24 July 2019 and ULL demonstrated its system. Deloitte UK looked at the following processes:
  - a) Booking Process.
  - b) Rider-Initiated Cancellation Process.
  - c) ULL Cancellation Process (Rider does not meet the driver; ULL cannot find a driver; and, Driver withdraws availability).
  - d) Scheduled Ride.
63. Deloitte UK's final report to TfL (see Appendix 25), on 28 August 2019, confirmed that the processes above remained as they were in 2018, when it previously assessed ULL's systems. Deloitte UK also considered the new features and updates to the Uber App since the previous report in 2018, most of which have been communicated to TfL. It concluded that none of those new features or updates had altered the overall structure of the ULL's booking processes. Deloitte UK also considered various other matters that had arisen in the intervening time, including some driver complaints about the app and its operation. It concluded that none of those issues changed its views on ULL's booking processes.
64. It is noted that ULL's process flows for bookings and cancellations have not changed since they were made in 2018. Deloitte's process flows show that bookings are accepted by ULL before they are allocated to a driver and the cancellation process is controlled by ULL with no driver interaction other than to notify ULL that the driver cannot fulfil the booking. It is considered that ULL's operating model, since the changes made in 2018, complies with the legislative framework.



**(e) TfL's compliance inspection**

65. Prior to granting a PHV operator's licence, TfL carries out a pre-licensing inspection of the applicant operator's premises. This check enables TfL to ensure that both the applicant and the premises are fit to be licensed and to check whether the operator is able to adhere to all the licence requirements before a decision is made. The inspection of any proposed operating centre is carried out by a TfL Compliance Officer ("CO").
66. Section 4(3)(e) of the 1998 Act states:
- "A London PHV Operator shall...at the request of a constable or authorised officer, produce for inspection any record required by this section to be kept."
67. TfL ordinarily carries out its first compliance inspection within six to eight weeks of a licence being granted. Thereafter, TfL will carry out announced and / or unannounced compliance inspections of licensed PHV operators and their premises from time to time. An unannounced inspection may be carried out as a result of intelligence received or the identification of non-compliance when carrying out on-street checks of drivers and vehicles.
68. The announced compliance inspection of ULL's operating centre took place between 10 and 12 July 2019, and was undertaken by 20 COs, who applied the ordinary standard in inspections of this kind. The purpose of the inspection was to verify that ULL has in place the following as a minimum:
- a) Customer booking confirmation and overall booking processes for all bookings;
  - b) A system for providing accurate fare estimates;
  - c) A system for creating and retaining driver and booking records;
  - d) Any new requirements set out in regulations changes;

- e) A full set of vehicle records including insurance certificates and Motor Insurance Bureau records;
  - f) Records of complaints and lost property, which included the complaints that have recently been investigated as referred to above (a thorough check was undertaken on ULL's new driver dismissal and complaints process);
  - g) Advertising to ensure it complies with section 31 of the 1998 Act;
  - h) Relevant documents either held or displayed at the operating centre, such as public and employer liability insurance, operator's licence and VAT registration certificates.
69. During the course of a compliance inspection, each item of non-compliance with the 1998 Act and the relevant PHV regulations is scored. At the end of the inspection, operators are given an overall score between one and seven. Operators are then given a series of follow-up actions within various categories. These are based on the Grading Categories guidelines.
70. Operators are given an opportunity to rectify any identified areas of non-compliance during the inspection, before it is finalised.
71. The Compliance team undertook a small sample check during the compliance inspection. They checked driver and vehicle records bookings between two separate ten minute periods on two different days at the end of June 2019. Overall, the records for 6,161 drivers and vehicles were checked. The sample checked was relatively small and checks of this kind are, of course, not capable of uncovering all possible issues. However, the inspection did not reveal any systemic issues that raised concerns.
72. The inspection did not reveal any other areas of concern or non-compliance by ULL. TfL provided confirmation of this to ULL at the end of the inspection.

**(f) ULL's management structure and governance**

73. Prior to the appeal hearing in June 2018, Uber global underwent a significant number of senior personnel changes, including a number of high profile dismissals of those who were involved in the issues that had previously affected Uber's reputation, including the 2016 data breach. Uber global also made a number of key appointments to its senior management team and Board. Some senior management changes also took place at ULL, including the departure of the previous General Manager for the UK and Ireland, Jo Bertram.
74. Since the grant of a licence by the Chief Magistrate in June 2018, the management structure of Uber global and ULL has continued to change, including the appointment of a new Chief Privacy Officer, a Data Protection Officer, and a Chief Trust and Security Officer for Uber global. In addition, ULL appointed a new Head of Compliance for the UK and Ireland, James Heaton-Smith, and appointed Jamie Heywood as Regional General Manager for Northern and Eastern Europe. Tom Elvidge who was ULL's General Manager for UK and Ireland, left ULL in April 2019 and was replaced with Melinda Roylett in August 2019 as General Manager for UK and Ireland.
75. In accordance with condition 1 of the conditions imposed by the Chief Magistrate and following the 24 September 2019 decision, the ULL Board continues to have an independent Chair, currently Laurel Powers-Freeling, with a majority of independent members. In the Chair's letter to TfL supporting ULL's licence application (see Appendix 19), she commented that the Board has become a *"unified body, with clarity as to both ULL's unique business model and responsibilities, as well as its relationship to UTI and ULL executives."*
76. Ms Powers-Freeling refers to *"documents and dialogue"* provided to the Board each month which she says provides the Board with evidence that the changes to *"ULL's systems, procedures and perspectives"* are *"effective and embedded"*. Ms Powers-Freeling also said that ULL demonstrates that its

*“commitment to transparency and compliance is a genuine and permanent element of the organisation’s culture”.*

77. Ms Powers-Freeling also refers to the relationship with Uber global and says that the Board has been given *“the visibility, authority and autonomy to take full responsibility for ULL’s regulatory obligations and to direct ULL to take specific actions to ensure compliance, including where they might diverge from the global corporate position”.*
78. The Board underwent an independent Board review in April 2019 which Ms Powers-Freeling refers to in her letter. It was undertaken by Independent Audit Limited (‘IAL’). Ms Powers-Freeling reported that IAL gave positive feedback to the Board as well as recommendations for development, and endorsed the governance structures the Board has put in place, *“highlighting both the strong functioning of the Compliance Protocol and the “transparency and openness” of the dialogue between the Board and senior management”.* IAL commented that the Board *“has reached a surprising level of maturity given the fact it was established only very recently”* and that *“it has developed to a point which is not far out of line with the way we see boards operating in much more well-established (and bigger) organisations.”* Further details of IAL’s findings were provided in the June 2019 assurance report.
79. Since April 2019, the Board has shared with TfL after each monthly meeting a summary of the issues discussed (see **Appendix 17**). It is evident from these summaries that the Board is concerned about customer safety and that it holds the ULL operational team to account. In addition, since the 24 September 2019 decision, Ms Powers-Freeling has provided the minutes of the ULL Sub-Committee (see Appendix 43a). There is no requirement on ULL to share these summaries and minutes but TfL finds them useful to understand the Board’s focus.
80. Laurel Powers-Freeling, as Chair of the Board, has met TfL on several occasions since June 2018 to provide feedback on the ULL Board’s role both within ULL and Uber global. These meetings provide a useful insight into the structure of the ULL Board and autonomy given to the ULL Board by Uber

global. TfL has used these meetings to ask the ULL Board to ensure focus on specific issues.

81. The June 2019 Assurance Report referred to a number of governance arrangements that ULL has in place which includes:
  - a) The Compliance Steering Group – responsibility to review the operation of the Compliance Protocol and the resolution of all matters of concern during the previous three months;
  - b) The Supervisory Group – made up of the Chair of ULL Board, Chief Legal Officer of UTI and CEO of UTI which meets annually to review the operation of the Compliance Protocol.
  - c) Breach Reporting Policy – helps ULL to manage breaches of its regulatory obligations and internal policies. Breaches are recorded in the breach register which is a centralised record, the breach is assessed by the LOMC and can be referred to the ULL Sub-Committee and the ULL Board for consideration; consideration of whether the breach should be communicated to TfL; appropriate action is determined and once taken, the breach is marked as resolved.
82. TfL considers that the ULL Board has helped ULL to change its culture and ensure that it is transparent and cooperates with TfL as its regulator. Without the strong steer and guidance from the Board and particularly the Chair of the Board, Laurel Powers-Freeling, TfL does not consider that ULL would have been able to overcome some of the issues that were of concern at the time of the 2017 decision and certainly not within the timescales ULL has achieved.
83. Following the ITSM service management maturity assessment carried out by Cognizant, TfL has a greater understanding of the LOMC's role, when changes are being made to the London specific configuration of the Uber app. All changes that have been designed by the Uber Global team are

assessed and approved by the LOMC to ensure that the changes are appropriate and compliant with the local rules and regulations for London.

84. However, Cognizant has also stated that the LOMC are not best placed to determine if the technical change would introduce a vulnerability into the app or other undesirable outcomes. Cognizant were not provided evidence that there is anything other than a light testing process to ensure that the change works rather than a wider testing process that looks to identify unintended consequences of the change or other vulnerabilities that could be exploited. This suggests that the LOMC (and subsequently, the Board) is not in a position to be confident – when it approves changes – that they will not give rise to vulnerabilities within the overall Uber system, that might be exploited by drivers (or potentially third parties). This Note returns to this point in Section 5 below.
85. The Board (and LOMC) also relies considerably upon its operational team to bring matters to its attention. That has not always taken place as it might have done. For example, the driver photo fraud issue was not escalated to the LOMC and the Board's attention until March 2019 following two passenger complaints, even though the first occurrence took place in October 2018. Also, the LOMC had decided to report an issue about an unauthorised app to TfL, in advance of a quarterly meeting in July 2018 with TfL but did not do so due to an oversight.
86. Furthermore, there have been some indications to TfL that some of ULL's new senior officers have not fully understood the nature of the regulatory regime within which ULL operates, or the nature of ULL's relationship with TfL as regulator. For example, following the decision to grant ULL a licence for 2 months, ULL's General Manager for Northern and Eastern Europe is reported as saying in an article for City AM on 30 September 2019 that the outstanding issues TfL was seeking from ULL were merely "administrative" (see Appendix 31). That was misleading and inaccurate, and did not reflect the substance of TfL's decision. It was also concerning as it suggested that ULL had not appreciated the seriousness of the issues that TfL was

considering and on which it was seeking clarity. These comments, among other matters explored in this Note suggest to TfL that even following personnel changes, there remain some misunderstandings within ULL's senior operational management in relation to the licensing environment and TfL's role within it.

87. Nonetheless, the overall picture in relation to ULL's management is positive. The leadership of the company, as a whole, has significantly improved since the 2017 decision and is now in a healthier state.

#### **g) Programme ZERO**

88. ULL's Board has commissioned a new programme, Programme ZERO, which aspires to drive the rate of ULL's regulatory breaches that it has experienced (see below) down to zero or as close to zero as possible. There are five workstreams in Programme ZERO which are:
- a) Workstream A focuses on tools and processes related to document review and approval
  - b) Workstream B focuses on tools and processes related to condition 12b (the requirement to suspend or dismiss a driver and notify TfL within 48 hours of receiving a safety related complaint concerning a driver)
  - c) Workstream C focuses on tools and process related to Regulation 9(4)(c) (the requirement to notify TfL within 14 days of a driver dismissal)
  - d) Workstream D focuses on tools and processes related to condition 5 (the requirement to provide TfL with 28 days notification of any material changes to the operating model, systems or processes, that may affect compliance with ULL's regulatory obligations)
  - e) Workstream E focuses on further enhancements to the tools and processes ULL uses to manage potential breaches when they are identified.

89. The June 2019 Assurance Report, covering the period from 1 December 2018 to 31 May 2019), referred in detail to Programme ZERO and to the impact of it in a chart showing that breaches of condition (other than condition 12b, requiring ULL to notify TfL of any decision to suspend or remove a driver from the platform within 48 hours) had reduced from 38 in the first quarter of 2018 to 14 in the first quarter of 2019, and to 3 in the first two months of the second quarter of 2019. It also referred to a gradual reduction of breaches of condition 12b since 1 January 2018.
90. The June 2019 Assurance Report set out in some detail the changes that have been introduced to personnel and systems under each of the five workstreams under Programme ZERO. Some of these changes include the recruitment of 40 agents to support a second manual document review check (four-eye principle) and the pre-approval of all driver and vehicle related documents submitted to ULL, recruitment of 30 new safety support agents to improve the compliance with condition 12b, refresher training for agents reviewing documents and safety complaint taxonomy and correct escalation guidelines. The changes that have been made are considerable.
91. The October 2019 report, covering the period between 1 June and 30 September 2019, gave a further update on the success of Programme ZERO and the changes that had been made since 1 June 2019. It also referred to a new Workstream (Workstream F) being added that focuses specifically on document fraud. Changes delivered through this Workstream F include:
- a) New processes to inform TfL at the conclusion of each investigation of potential document fraud (whether the driver is deactivated or not) and to provide TfL with a monthly summary of all open investigations;
  - b) Six additional agents to focus specifically on investigation of potential document fraud cases and one additional agent to undertake company validations;



- c) Meeting with senior representatives from the Motor Insurance Bureau to discuss how they might work together to jointly address the issue of fraudulent insurance documentation within the industry
92. TfL recognises the significant improvements that Programme ZERO has made. It demonstrates ULL's commitment to reduce regulatory breaches. We consider that Programme ZERO has produced some positive changes and new initiatives in ULL's operations.

## **Conclusion**

93. The above factors all support the conclusion that ULL is fit and proper to hold a PHV operator's licence. These factors have been taken into account in the recommendation in this Note as to ULL's fitness.

## **5. FACTORS THAT HAVE LED TO THE RECOMMENDATION THAT TFL CONCLUDES ULL IS NOT NOW A FIT AND PROPER PERSON TO HOLD AN OPERATOR'S LICENCE**

94. However, the recommendation in this Note is that TfL concludes ULL is not a fit and proper person to hold a PHV operator's licence in London. In summary, that recommendation is made for the following reasons:
- a) All of the positive matters set out above are acknowledged, and have been taken into account.
  - b) However, in the period since the Chief Magistrate granted ULL a licence, in June 2018, ULL has reported various regulatory breaches to TfL. Some, indeed many, of those breaches have been extremely serious in nature. By way of example:
    - i. Some of those breaches have concerned cases in which drivers were providing PHV services without hire and reward insurance in place. This is a particularly serious issue and is of critical importance from the perspective of public safety. The risks to the public of uninsured drivers, offering uninsured services, are grave and acute.

- ii. As set out above, at paragraph 12(b)(ii) some of those breaches have concerned cases in which individuals were providing PHV services, via the Uber app, using another driver's account details. That is considered to be an unacceptable and very grave risk for the reasons set out.
- c) These breaches, along with others detailed below, have flowed, at least in part, from a variety of different vulnerabilities within Uber's systems (that have been exploited by drivers) as well as human error (in some cases). ULL has taken a number of steps to address these breaches and the number of those incidents is currently falling.
- d) However, these breaches, when viewed together, raise a serious question as to whether TfL has sufficient confidence in ULL's ability to prevent incidents of that kind occurring in the future, in part because at least some of them appeared to derive from weaknesses within ULL's systems and service management processes.
- e) ULL provides TfL with biannual Assurance Reports. Those reports have improved over time. However, in certain important respects, those reports have failed to recognise and prioritise serious breaches of the licensing framework, such as those set out below.
- f) As a result of its lack of confidence in ULL's ability to prevent new incidents of this kind occurring, TfL commissioned a report by Cognizant, a systems and security expert. TfL commissioned that report in the hope that it would provide it with sufficient confidence that ULL's processes, IT service management (including change, release, incident and problem management) and cyber security were at or above industry standard for an organisation such as ULL. That would have provided TfL with reassurance as to ULL's fitness and propriety to hold a PHV operator's licence.
- g) As set out in more detail below, the Cognizant report into ULL's IT service management rated ULL as below the standard that would be expected of

a company in its position. Unfortunately, as a consequence, this does not provide TfL with sufficient confidence that the kinds of serious breaches described above will not recur.

- h) In all these circumstances, it is recommended that TfL concludes ULL is not a fit and proper person to hold a PHV operator's licence.

## **ULL's breaches of the licensing framework**

### **(a) Insurance related concerns**

95. Three different matters have arisen, in the period since June 2018, in relation to the provision of PHV services without insurance via the Uber platform. ULL has a statutory obligation to keep a copy of the current private hire and reward insurance certificate of any driver on its platform before allocating private hire bookings. Failure to do this is a criminal offence under section 4 of the 1998 Act.
96. It goes without saying that insurance is very important within the private hire sector. Each of the following matters has been a cause of major concern to TfL and has contributed to the recommendation that TfL concludes ULL is not fit and proper to hold a PHV operator's licence.

### **(i) Uninsured vehicles**

97. On 7 October 2018 during a routine on-street compliance check, TfL identified a ULL driver who was available to work on the ULL platform who did not have valid hire or reward insurance. ULL gave further details on 30 October 2018 (see Appendix 8) confirming that the driver had been dismissed, that ULL had reviewed all active insurance documents on its system (in excess of 60,000 documents), and through this review, had identified a further 4 drivers with incorrect insurance cover.
98. Further correspondence took place between TfL and ULL about these insurance breaches and in a letter dated 22 February 2019 (see Appendix 14) to TfL, ULL confirmed:

- a) LOMC and the ULL Board had directed ULL to conduct a thorough assessment of the system for reviewing and approving insurance documents which resulted in re-training staff to correctly check insurance documentation.
  - b) It had contingent liability insurance policy which it said would provide coverage for any third party as a result of a claim arising from an incident during the provision of transport services using the Uber app where insurance is not otherwise available.
  - c) The failure was the result of a manual error.
  - d) It had reviewed 30,000 insurance documents in October 2018 (this contradicted its earlier notification to TfL that over 60,000 documents had been reviewed).
  - e) It, and the Board, have zero tolerance for any incident that puts at risk the safety of passengers and drivers.
99. In relation to ULL's contingent liability policy, TfL has taken advice on this point and does not consider that this policy would discharge ULL's liability under the Road Traffic Act 1988, and is unlikely to provide adequate insurance cover in circumstances where the driver does not have hire and reward insurance in place.
100. TfL noted that each of these drivers who were driving without hire and reward insurance had carried out multiple bookings. Two of the drivers undertook over 1,400 bookings between them over an extended period. Also, in breach of the Operator's Licence Regulations, ULL had not kept a copy of the current certificate of insurance, or certificate of security, in relation to those drivers.
101. In 2014, ULL was prosecuted and convicted for the offence of causing or permitting drivers to use vehicles on a public road for hire and reward without the requisite motor vehicle insurance policy. Following that conviction at the time, TfL decided not to suspend or revoke ULL's licence but instead warned

ULL that the conviction would be taken into account should TfL have any further cause to consider regulatory action against ULL in the future. At that time, ULL described the steps it was taking to prevent anything similar happening again in the future. In light of this latest incident, TfL considered what fresh action to take, if any.

102. After carefully considering ULL's submissions, TfL prosecuted ULL for the offences of "causing/permitting the use of a motor vehicle on a public road without insurance" and "failing to comply with statutory record keeping obligations". In total, ULL faced four criminal allegations, in relation to two drivers. The two ULL drivers concerned were also charged with using a motor vehicle on a public road without appropriate motor vehicle insurance. On 31 July 2019, ULL pleaded guilty to each of the four offences and were fined a total of £28,800, ordered to pay TfL's costs of bringing the prosecution of £22,470 and a victim surcharge of £170. Each of the drivers also pleaded guilty at the same hearing and were also fined and ordered to pay costs.
103. At the hearing, the judge said that ULL should have learned the lessons from the previous conviction arising out of an insurance breach in 2014 and that the offences were regrettable and avoidable.
104. The various aspects of this matter which call ULL's fitness and propriety into question are:
  - a) This is the second time that ULL has been prosecuted in relation to insurance offences. As noted by the judge at the hearing, ULL should have learned the lessons from the previous conviction and the 2018 offences were regrettable and avoidable. Although only two drivers were prosecuted, there were 12 drivers in total who were drivers for ULL between early 2018 and October 2018<sup>1</sup> that were found not to have hire and reward insurance in place and those drivers potentially undertook

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<sup>1</sup> TfL has considered the circumstances of each case and considered whether enforcement action is appropriate. In some cases, the limitation period for prosecution had lapsed by the time they came to the attention of ULL and in others, it was not considered in the public interest to prosecute.

thousands of trips with passengers. This has significant safety implications for passengers and other road users.

- b) TfL notes that ULL believed that the contingent insurance policy would “plug the gap”, should there be any issues arising with the insurance documents held by drivers. TfL indicated to ULL in 2014 that the contingency liability policy ULL had in place at that time was insufficient. TfL was surprised that ULL had again sought to rely upon it. It is considered that ULL should have taken adequate steps to ensure that there was no gap in insurance cover by drivers by meeting their obligations and ensuring drivers have the correct hire and reward insurance in place rather than relying on the contingency insurance policy.

105. Since this issue came to light, ULL has put further systems in place which include:

- a) Improvement to its electronic and manual processes.
- b) Reviewing all other insurance documents it held for drivers to identify if there were any other failures.
- c) Close involvement of the Board which directed a number of actions be taken to find out why these failures occurred and to put in place actions to prevent them occurring again.
- d) The Board, and ULL as a whole, has committed to zero error in relation to breaches.
- e) Invested resources in eradicating errors, both in the form of new staff and new technological solutions.
- f) Communicated proactively with TfL on this issue and readily shared information with TfL once it emerged.

- g) Continued engagement with several insurance companies specialising in taxi and private hire
  - h) Further extension of ULL's Instadoc system to additional insurance providers, enabling insurance documentation to be submitted directly to Uber by the insurer
106. It is considered that this second breach of the criminal law in relation to insurance is significant and provides a strong indicator that ULL is not a fit and proper person to hold a PHV operator's licence. The provision of uninsured PHV services is a matter of the utmost seriousness to TfL: it exposes the public to an unacceptable risk and places their safety in peril.
107. At the time of the convictions, ULL's PHV operator's licence was shortly due for renewal, and it was therefore considered appropriate that the convictions should be considered alongside all the available evidence, in the round, when ULL's licence was renewed. The steps that ULL has taken to address the failings in this matter have been noted, but there remains concern that this issue has occurred twice since ULL was originally licensed in 2012. ULL's criminal conviction (and the relevant background) has accordingly been taken into account in this recommendation as part of the overall assessment of ULL's fitness and propriety to hold a PHV operator's licence. TfL adopts a similar approach in relation to other PHV operators. Thus, TfL took into account as a serious matter a conviction against an operator for causing/permitting the use of a vehicle on a public road without insurance when considering the fitness of that operator. In some of these other cases this factor – amongst others - has led to the PHV operator's licence being revoked.

(ii) Premature acceptance of insurance

108. On 19 July 2019 (see Appendix 21), ULL notified TfL of a further issue that had resulted in a number of drivers driving passengers without hire and reward insurance in place. Drivers are able to upload an insurance certificate

to ULL's systems and TfL had identified that it was possible for its agents to approve those certificates in error. It had identified a number of instances where that error had been made, and the drivers concerned had taken trips before the start date of the insurance policy.

109. ULL said that it identified 9 drivers who took trips on insurance certificates which had been prematurely approved, with 252 trips taken by those drivers in the period between the insurance certificate being approved and the cover actually commencing.
110. In early August 2019 (see Appendix 21), of the 9 cases, there were two in which it was unclear whether insurance was in place at the time those trips were taken.
111. TfL recognises that ULL took immediate action to address this issue and has prevented this from happening again. However, having appropriate insurance in place is a basic requirement for operators. ULL's failure to ensure that this is the case is a significant breach of its obligations and raises real safety concerns.

### (iii) Fraudulent documents

112. This is an issue that is somewhat broader than insurance. In the period since the Chief Magistrate granted ULL a licence, ULL has notified TfL of a number of incidents in which fraudulent documents have been uploaded to their platform, or relied on by drivers. Two points are made by way of introduction:
  - a) It is of concern that TfL had to encourage ULL to review fully not only insurance documents that may potentially be fraudulent, but also other documents such as MOT certificates, DVLA driver licences and TfL PHV driver licences. Without TfL's intervention, there is no confidence that ULL would have itself taken the initiative to broaden its review and treat other suspicious documentation in the same way as insurance documentation.
  - b) As set out more fully below, ULL's historic practice, now altered, was to allow drivers to continue driving, while it investigated whether or not their



documents (including insurance documents) were fraudulent. It is considered that this is not consistent with the serious nature of this issue and the dangers presented to the public by uninsured PHV services.

113. This issue of fraudulent insurance documents was first brought to TfL's attention by ULL on 4 February 2019 although at that time (see Appendix 12), TfL does not consider it was properly escalated to TfL via normal established routes. ULL referred to 6 cases in which drivers had modified insurance documents to appear current when they had expired. Two of the drivers had not taken any trips but overall, the total number of trips taken by the remaining 4 drivers was 172. In its letter of 22 February 2019 (see Appendix 14), ULL referred to these 6 cases and a further 6 cases it had found of drivers undertaking trips with fraudulent insurance documentation.
114. TfL was concerned about these issues of fraudulent insurance and met with the Chair of the ULL Board, and the Regional General Manager for Northern and Eastern Europe on 11 April 2019 and asked ULL to investigate this matter urgently and to provide TfL with full and frank information on the issue. TfL also wrote to ULL about these cases on 25 April and 30 April 2019, seeking further details about these cases (see Appendices x and x).
115. TfL and ULL met on 2 May 2019 and ULL provided more details about the 12 cases and explained its approach to handling them. It confirmed that of the 12 cases, ULL had reported 10 of them either to Action Fraud or via a Witness Statement to the MPS. Two cases were from 2015 and 2016, and pre-date the established processes with the MPS. ULL also wrote to TfL on 16 and 17 May 2019 in which it said that it had developed new ways to improve the effectiveness of its controls and reduce weaknesses which drivers may seek to exploit (see Appendices x and x).
116. ULL said that it did not believe that these issues reflected a wider issue and that it believed it had sufficient controls and assurance processes in place to identify and deal with such cases. It said that since 1 January 2018, it is aware of 45 cases where a driver has been dismissed due to submission of a fraudulent document which it says represents 0.00145% of all documents

submitted to Uber by TfL licensed drivers over that period. These 45 cases include:

- a) 35 insurance documents;
- b) 3 MOT certificates;
- c) 3 Private Hire Driver Licences;
- d) 3 Private Hire Vehicle Licences;
- e) 1 Supporting Insurance Document.

117. ULL provided a further update on its investigations on 9 August 2019 (see Appendix 27). ULL said that, since the meeting on 2 May 2019, it logged and shared with TfL 27 further suspicious documents (insurance, PHV driver's licences, V5 Vehicle logbook and MOT certificates) which it suspected might be fraudulent. ULL confirmed that of these, there were 20 cases where the document issuer has confirmed that the document is fraudulent and ULL was seeking information from the driver to ascertain the driver's role in the fraud; 5 cases in which ULL was waiting for the document issuer to confirm whether the document is fraudulent; and 2 cases in which the document issuer confirmed that the document is not fraudulent. ULL also confirmed that in 17 of the cases, the driver's concerned did not take any trips prior to the fraudulent document being identified. However, TfL noted that some drivers were able to undertake journeys and in one case of a fraudulent insurance certificate, the driver took 801 trips before the document was flagged as being suspicious.

118. TfL was concerned that a number of drivers were able to carry out trips without insurance. However, it is recognised that some fraudulent documents, particularly insurance documents, are sophisticated and difficult to identify. ULL has now put in place additional training and mechanisms with insurance providers to identify those documents.

119. TfL was also concerned about the manner in which ULL responded when it first identified that a document might be fraudulent. Prior to September 2018, ULL did not suspend a driver's access to his or her account while ULL investigated and confirmed whether the driver had submitted a fraudulent document which enabled the driver to continue to work and accept bookings.
120. The ULL Board ordered a change to the way in which drivers suspected of this type of fraud were treated in September 2018 to suspend the drivers. However, TfL is concerned that the historic practice of ULL's operational teams at the time of these incidents was to allow drivers to continue to drive. That raises questions as to the judgement of the operational teams including whether or not they had appreciated the seriousness of this issue and whether or not passenger safety was being treated as paramount.
121. ULL has now explained to TfL the new steps that it has taken to identify and investigate potential fraudulent documents. They are significant, sophisticated and extensive, and are likely to lead to better results within ULL's systems. They include:
- a) Introduction of a secondary review of all documents before they are approved;
  - b) An increase in the number of ongoing assurance checks that are undertaken after document approval;
  - c) Document fraud training that has been developed with the support of the Home Office and the Metropolitan Police Service;
  - d) Availability of reference guides for agents that include examples of official documentation;
  - e) Introduction of a feedback loop to update agent training material as and when new fraud techniques and patterns are identified;

- f) Extension of the Instadoc system to additional insurance providers, enabling insurance documentation to be submitted directly to Uber by the insurer;
  - g) Enhancements to its document approval system, for example functionality that will flag to an agent when a driver re-submits a document multiple times.
122. More recently, ULL's letter received on 21 November 2019 (see Appendix 49), highlighted that it has been in discussion with the Insurance Fraud Enforcement Division (IFED), part of the City of London Police, to talk them through the steps that ULL has taken to identify and investigate potentially fraudulent insurance documentation and to explore the prospect of convening a cross-industry working group to share information and best practice in this area. The steps and actions taken by ULL in this area have also been recognised by the insurance sector as being sophisticated and thorough.
123. ULL also provides TfL with a weekly update on suspected or suspicious fraudulent documents. The October 2019 Assurance Report (see Appendix 38) records that there was only one concluded incident between 1 June and 30 September 2019 where a driver had uploaded a fraudulent insurance document. It also referred to two concluded incidents that occurred prior to 1 June 2019 but were not included in the June 2019 Assurance Report of fraudulent insurance certificates being uploaded by the driver.
124. In conclusion, the number of cases in which fraudulent insurance certificates (or other documents) have been accepted by ULL has fallen and the steps ULL has taken in this regard are recognised. Nonetheless, ULL's recent breaches in this area were serious. This posed a significant and unacceptable risk to passenger safety.

## (b) Driver Photo Fraud Issue

125. On 14 November 2018, ULL sent to TfL a PHV105 notification concerning a driver who had been dismissed from the Uber platform. The notification explained that ULL had become aware that the individual driving the vehicle was male, while the name on the account was female.<sup>2</sup> ULL investigated and removed the individual from the platform. In subsequent correspondence about this matter, ULL has subsequently confirmed that it did not consider this issue to be safety related and it was not escalated to TfL in the normal way, as a safety matter, which involves specific written notification of an issue being sent directly to senior management in TfL's Taxi and Private Hire (TPH) team. There were several other PHV105 notifications of dismissals of drivers involved in the driver photo fraud issue that were subsequently received, but the information in those notifications were vague as discussed further in paragraphs 131 and 132 below.
126. Appendix 2 to ULL's June 2019 Assurance Report contained a table listing 12 breaches that occurred prior to 1 December 2018, but had not been identified during the assurance process for the December 2018 report. The report explained that these breaches were not included in the December Assurance Report because they were identified in the assurance process that took place during the period 1 December 2018 to 31 May 2019.
127. Six of these breaches were described as cases of "partner-driver fraud", specifically "partner drivers manipulated settings on their device to upload their photograph as the profile picture on another partner driver's account, enabling them to take trips on that account". In five of those six cases, the individual who manipulated settings to upload their own picture on another driver's account had already been dismissed from the Uber platform. The driver whose account had been altered had also been complicit in this fraud by providing their login details to the unauthorised driver. The breaches took place between August and November 2018.

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<sup>2</sup> The wording provided in the notification suggested this was a one off issue and not a wider issue at the time.

128. ULL explained in the Appendix that Uber drivers in the UK are not allowed to upload a new photograph to the Uber platform, although, despite being a clear safety risk, this is possible in some other countries. However, four of the six drivers were able to circumvent this prohibition by manipulating GPS settings on their device, so that it appeared as though they were out of the UK at the time. As part of the maturity assessment carried out by Cognizant they identified that the way to manipulate the GPS settings was quite basic. It merely required the GPS settings to be switched off. It is clear that this vulnerability should have been identified as a flaw by Uber in the design phase.
129. The other two cases related to exploitation of a legacy version of the app, which was replaced by a new version of the app in late 2018. The legacy app was decommissioned in December 2018 and therefore would not have been able to be used from that time.
130. TfL was concerned that these cases gave rise to potentially serious safety issues, and it did not consider that ULL had adequately escalated these cases previously. They should have been brought to the attention of TPH's senior management as soon as they were identified.
131. TfL has expressed the view on more than one occasion to ULL, in early 2019, that the content of ULL's PHV105 notifications were sometimes too vague and incomplete and did not give TfL sufficient information to enable it to consider the appropriate regulatory action to take against the driver concerned. ULL's position, in response, was that "in order to protect the integrity of our fraud detection measures we are unfortunately unable to be more specific in our PHV105 notices about the fraudulent behaviour(s) that an individual driver might have exhibited." This gave TfL some cause for concern, because it seemed that ULL was prioritising the protection of its fraud detection measures over safety.
132. For example, several notifications TfL received concerning drivers involved in the driver photo fraud issue said that the driver "was performing fraudulent activity whilst using the Uber app", and that the behaviour was in breach of

Uber's services agreement. The notifications also said "we are unfortunately unable to disclose anything further as this would reveal sensitive fraud-detection methods..." After further and lengthy discussion with ULL, it said it would improve the notifications and eventually began providing fuller and more detailed PHV 105 notifications in July 2019, although TfL was still receiving updated notifications into September 2019. **Appendix 22** contains the chronology of this correspondence.

133. On 14 August 2019, TfL wrote to ULL and enquired how many trips had been undertaken by the unauthorised drivers in question after the profile pictures had been swapped (see Appendix 23).

134. ULL wrote to TfL on 22 August 2019 (see Appendix 24) and explained that:

- a) It had now completed its internal audit process which had identified a further 15 cases involving identity fraud by drivers: the total number of cases was now 21;
- b) As of that date, all those additional drivers' accounts were suspended whilst investigations were completed.
- c) Of the 15 further cases identified, two involved unknown drivers using the accounts of ULL drivers. In other words, these were probably not drivers that have previously been active on the ULL app and may not have a London PHV driver's licence at all.

135. ULL's email also explained the steps it was taking to prevent these issues which included:

- a) New functionality of the driver app (based on the ID of the city that a driver on-boarded with Uber) to restrict uploading of driver photographs in the UK.
- b) Since early 2019, all new driver photographs go through a review process during which the profile picture is compared against the photographs on the PHDL and the DVLA driving licence documents on the driver account.

- c) Implemented functionality preventing drivers who have on-boarded after January 2019 from uploading photographs remotely (no longer allowing drivers to upload a photograph when they initially create an account).
  - d) All driver photographs would now be taken in the Greenlight Hub.
  - e) Implementing a specific photograph backdrop designed to help prevent drivers from imitating a photograph taken in the Greenlight Hub.
136. TfL wrote to ULL on 5 September (see Appendix 27a) and asked, whether the ULL Board was aware of this issue and sought specific details about the cases including the number of trips carried out and whether the drivers involved were licensed by TfL at the time.
137. In its reply on 12 September 2019 (see Appendix 28), ULL explained, amongst other things, that:
- a) It fully shares TfL's safety concerns about these incidents.
  - b) The time window during which drivers had been able to change their profile pictures was now wider than ULL originally understood as incidents had occurred between at least 12 August 2018 to 20 January 2019.
  - c) The original breach was miscategorised by ULL, which did not identify it as a regulatory breach, which should have appeared in the December Assurance Report.
  - d) Nine of the 15 cases that were identified in the 22 August 2019 email could and should have been included in the June 2019 Assurance Review.
  - e) While some of the cases arose out of GPS manipulation, the root cause analysis had at that time identified that the Uber platform may have been manipulated in more than one way.



- f) Investigations were ongoing, and it had not reached a conclusion as to the root causes of this issue.
138. ULL's reply included details of the number of trips taken on the compromised driver accounts. In total, at that time, there were 13,850 trips that were affected by the driver photo fraud issue which gave TfL cause for concern. Some of those drivers had each taken over 1,000 trips before ULL had identified any issues and suspended them. One of these drivers has not been identified and took 539 trips. It is possible that this driver has never been licensed in London as a PHV driver or had been licensed but their licence had been revoked. It is also significant to note that these trips would not have been insured.
139. ULL also gave a lengthy explanation of the timeline for identifying these cases and the steps it took. It referred to a complete audit which it commenced in February 2019 of all London drivers who had taken a trip between 1 September 2018 and 11 February 2019 (the date the audit activity commenced) to ensure that it had accurate photos of them on file. The initial phase of the review was completed in April 2019. A further review was carried out by ULL's Documents Compliance team based in London which concluded on 22 August 2019 and ULL provided the results of that to TfL.
140. In terms of the overall handling of this issue, ULL had received two passenger complaints in February and March 2019 about the driver's profile picture in the app not matching the picture on the driver's PHDL badge. Those incidents were discussed by the LOMC on 5 March 2019. This issue was escalated to the ULL Board at the meeting on 25 March 2019. Following further discussion by the Board about this issue, as more cases came to light, ULL notified TfL on 31 May 2019.
141. It is not considered that the manner in which this issue was notified to TfL was consistent with other notifications ULL has given. Usually, any issues of substance and concern were escalated by way of a separate letter or email to the TPH's senior management. However, this issue was included in a note giving an overview of ULL's correspondence to TfL and its key activity over

the past month (see Appendix 18). This is not considered to be appropriate notification. This is not simply a formalistic point. It indicates that ULL may not have fully appreciated the significance of this issue such as to highlight it properly to TfL, and seek to discuss it further. This is further supported by the fact that these cases appeared in an Appendix to the June 2019 Assurance Report, rather than appearing in the body of the report. That raises questions as to whether ULL was trying to lessen the impact and significance of these issues hoping that they would go unnoticed, or alternatively, it gives cause to question the judgement of the senior operational management team as to the manner in which these issues were communicated and the importance that ULL attributed to them.

142. It is of serious concern that the licence of one of the drivers involved in manipulating the Uber app in this manner had earlier been revoked by TfL because the driver accepted a caution in respect of the distribution of indecent images of children. This raises serious safety concerns as this driver was accessing the Uber app, and providing services, despite the fact that TfL (and ULL) had previously decided that they were no longer suitable to provide PHV services to the public. All of the identified drivers who had swapped their profile photo onto the account of a ULL driver had been previously dismissed or suspended by ULL.
143. TfL was concerned about this issue at the time of taking its decision to grant a licence to ULL on 24 September 2019. As set out above, at that time, TfL did not have a full and clear picture of the relevant events and their causes. There remained questions concerning how many unauthorised drivers, whether licensed or not, may have been able to manipulate the app and undertake trips, as well as the complaint history of these drivers, and ULL was still investigating this matter and had not identified all of the root causes.
144. In the intervening period, TfL asked ULL to provide the complaint history for each of the drivers involved in the driver photo fraud issue in order to understand whether there had been any other safety related complaints for each of these drivers. TfL was disappointed that ULL had not previously

undertaken a review of those complaints histories. This has led to further concern as to whether ULL has fully understand all of the safety implications arising from this issue.

145. TfL attended ULL's London office on 15 October 2019 to obtain further information in relation to the driver photo fraud issue directly from ULL's systems. As part of the visit, ULL demonstrated some of the tools and processes it used to access and analyse the complaints history of its drivers. TfL noted with some surprise that ULL did not have a centralised tool to store and access relevant information. This raised doubts for TfL as to the ease in which ULL was able to accurately and efficiently find and analyse complaints that were on a driver's record. Consequently, during the visit, several complaints were identified by TfL that were not included in previously submitted PHV105 dismissal forms due to being either miscategorised or omitted erroneously.
146. In one specific case, TfL also identified several complaints that were included within the PHV105 dismissal form it had received from ULL that related to significant concerns about the inappropriate conduct and identity of the driver. It is TfL's view that ULL did not investigate these complaints appropriately.
147. TfL held two further meetings with ULL on 11 and 16 October 2019. In the meeting on 16 October 2019, ULL provided an update on its audit of driver photo fraud incidents and a review of associated complaints from March 2018. It also committed to providing TfL with full information in writing by 1 November.
148. On 22 October 2019, ULL provided further details of some of the drivers involved in the driver photo fraud issue (see Appendix 39). This included a further case of driver photo fraud that had been identified following a further audit which was undertaken using a wider timeframe. It explained that the profile photo on an account belonging to a driver was uploaded 15 January 2019 of another driver who had been dismissed on 12 June 2018 for fraudulent behaviour relating to manipulation of GPS settings on his device.

The driver who had the account and allowed the profile photo to be altered was dismissed for fraudulent behaviour involving 4 high value trips on 13 April 2019. Between 15 January 2019 and 13 April 2019, there were 481 trips taken.

149. In the update given on 22 October 2019, ULL explained that one of the cases that it had originally treated as being driver photo fraud (as reported to TfL in ULL's letter of 22 August 2019) in fact involved the Private Hire Driver's Licence and DVLA Driving Licence belonging to one driver being uploaded to the account of another driver and the name on the account changed. TfL sought clarity from ULL in relation to this issue, in a letter sent on 13 November 2019 (see Appendix 44), as there were discrepancies in the data and information provided. This raises another issue of concern in that it appears to be fairly easy for duplicate accounts to be created by persons who may be unlicensed as PHV drivers or previously suspended or dismissed. TfL is also concerned that ULL had firstly identified this issue as driver photo fraud but then had later recategorised it. This suggests that ULL may be unclear about the actual nature of incidents such as this. That calls into question the confidence that can be placed in the accuracy of the information that ULL provides about these breaches.
150. ULL provided further information about these two drivers on 18 November 2019, but this issue remains unclear, and in the time available, it has not been possible to resolve it.
151. On 25 October 2019, ULL gave full driver complaint histories of 40 drivers that it said were involved in 21 cases of driver photo fraud (see Appendix 41). There were 40 drivers involved in these cases because the drivers whose account had been altered were complicit in the fraud by giving access to their account to the unauthorised person. ULL's email of 25 October 2019 included another driver that had subsequently been identified by ULL following a further audit it had undertaken. It also referred to 20 complaints about the drivers which were classed as "safety related complaints" that were omitted from the PHV105 dismissal forms that TfL received for the drivers.

Information about other safety related complaints concerning a driver are important when TfL assesses the fitness of that driver.

152. This lack of accuracy is of significant concern and raises questions over the effectiveness of ULL's complaint reporting process. These omissions suggest that there could be several other safety related complaints that TfL has not had sight of when reviewing a driver's fitness to hold a licence.

153. ULL's General Manager for UK and Ireland also wrote to TfL on 25 October 2019 providing a summary of the issue and actions it has taken with regard to driver photo fraud issue (see Appendix 41). The letter explained that:

a) The first technical vulnerability was that GPS settings on a mobile device could be manipulated to enable an individual to bypass the security settings in the Uber app, which prevent drivers in the UK from uploading or amending profile pictures. This was triggered by a global technical change introduced by Uber on 7 March 2018 to allow drivers to remotely upload their photograph in the driver app, which is available to some countries in which Uber operates.

b) The second technical vulnerability was caused by a global change made on 15 October 2018 when Uber introduced a technical change to classify a driver's profile picture as a 'required document' on the driver's account rather than a simple 'photograph', and as such a driver was able to upload a profile picture to their account. A legacy version of the Uber app enabled drivers to remotely upload a profile photo.

154. ULL also identified additional steps it had taken to prevent this issue reoccurring:

a) Introduction of a technical change so that only photographs taken using the internal Uber Driver Photo App on an Uber-owned device can be uploaded to a driver's account. This applies to all photographs uploaded from 11 October 2019 onwards. Driver photos uploaded before 11 October 2019 have been reviewed by ULL.

- b) Implementation of a further technical change within 'Enforcer', ULL's compliance system used in real-time when dispatching bookings to drivers and vehicles. The Enforcer system now includes an additional check to confirm that the profile picture on a driver's account has successfully passed the most recent audit or was taken using the Uber Driver Photo App and approved by ULL before confirming the eligibility of that driver to complete the booking. This change was also implemented on 11 October 2019.
155. ULL wrote again to TfL on 5 November 2019 (see Appendix 42) about another issue that TfL wanted further information about involving the wrong drivers undertaking trips. It said in this letter that in the course of investigating the wrong driver complaints received, it had identified one further instance of driver photo fraud. ULL explained that during a recent audit, this case was identified as a potential mismatch between profile picture and driver documents, but the agent concluded the pictures were a match. Following reassessment as part of the wrong driver review, the case was escalated to ULL's senior management which concluded this was a case of driver photo fraud. ULL gave details of the case. The profile photo on the account belonging to a driver was uploaded on 1 December 2018 of another driver who had been dismissed on 25 November 2018 for fraudulent behaviour relating to cancellation fees. There were 334 trips were taken on the account between 1 December 2018 and 18 February 2019 when the account was suspended as the driver's PHV driver's licence had expired.
156. The precise scope of the driver photo fraud issue has evolved over time. ULL's letter of 25 October says that, as at 22 August 2019, a further 20 cases of driver photo fraud had been identified. However, this appears to contradict the letter of 22 August 2019, which refers to a further 15 cases having been identified during ULL's audit.
157. More importantly, the letter of 22 August 2019 said that ULL's audit was complete, and that ULL was confident that there were no more drivers involved. Following the September 2019 decision, however, ULL said it

carried out a further audit, which reviewed cases from 7 March 2018 (this was the date that ULL said its exposure to vulnerability of driver photo fraud first began), and found another driver that had been involved in driver photo fraud (see above). Then on 5 November 2019, ULL explained that it had found another driver photo fraud case when undertaking a review concerning complaints about the wrong driver undertaking the trip (see above).

158. TfL is concerned that it has undertaken a number of internal reviews within different time parameters and each time has found more drivers who have been involved in the driver photo fraud issue. ULL's approach to and handling of this issue does not give confidence in: (a) the outcome of the latest review, (b) the fact that all drivers involved have been identified and that the number of trips have been identified, and (c) that ULL has a clear grasp of all of the relevant issues.
159. TfL has reviewed the complaints history that ULL has now provided to TfL for all the drivers involved in this issue. However, as noted above, it is not possible to confidently state that complaints have been correctly categorised and that there are not more drivers involved in this issue that have not been identified by ULL. It is noted that one of the drivers accepted a caution for downloading and distributing an indecent image of a child and his PHV driver's licence had been revoked by TfL. This is clearly alarming as the individual in question had been allocated over 1,500 trips by ULL, creating a significant public safety risk.
160. The steps that ULL has put in place in order to prevent this type of fraud reoccurring are recognised. Further, on 24 November 2019 (see Appendix 56), ULL provided TfL with notification of a material change to the Uber app by introducing Real-Time ID Check in the Driver app in the UK and Ireland. It explained that Real-Time ID Check is designed to further minimise any possibility for drivers to fraudulently participate in unauthorised account-sharing. When triggered, Real-Time ID Check involves comparing the driver's profile picture (which has previously been verified against their ID Document) with a real-time driver selfie. The driver will only be able to go

online if it is determined that the faces in these two photos match. Explicit consent to this will need to be given by the drivers in order to comply with the GDPR. The drivers can choose between either having the picture reviewed via Microsoft identity verification technology or by having three Uber agents independently review the submission manually. If the driver does not agree to either of these options, they will not be permitted to go online.

161. ULL explained that the Microsoft product incorporates selfie quality filters which help drivers submit compliant selfies, including the face being clear, the photo having enough lighting, no blurring, or the user wearing glasses. It said that although the manual review does not currently have this feature, it is working on developing this technology for any driver selfies submitted through this option and expects to have this implemented into the product in the first half of 2020.

162. ULL said that the feature will be triggered in a number of circumstances:

- a) in response to Uber receiving a "wrong driver" type passenger complaint;
- b) randomly but regularly triggered before a driver goes online, [REDACTED]  
[REDACTED]  
[REDACTED].

163. ULL gave details on how Real-Time ID Check will work in practice. It confirmed that drivers who fail for the first time will be held offline for 24 hours, after which time they will be able to submit a new selfie, and drivers will not be able to go online until a selfie has been approved. A second failure at any point in the future results in dismissal.

164. ULL said that it intends to roll out this feature imminently, pending the approval of the Data Protection Impact Assessment, as required by GDPR, by Uber's Chief Privacy Officer and Data Protection Officer. It confirmed that LOMC had considered the change and concluded that notification needed to be given to TfL in accordance with its conditions. Due to the date on which



this notification was received, it has not been possible to fully consider this proposed change to the Uber driver app. In principle, taking action to prevent drivers fraudulently participating in unauthorised account-sharing is welcomed and demonstrates Uber's commitments to preventing such issues occurring in the future. It is also acknowledged that this is likely to be an industry first in London. For the reasons set out below, TfL expects ULL to fully consider any vulnerabilities that may inadvertently be created as a result of the Real-Time ID check feature and ensure that it is introduced with appropriate due diligence and controls. The proposed change has been taken into account in the recommendations in this Note.

165. However, it is of concern that ULL's systems seem to have been comparatively easily manipulated such that drivers were able to change photos on driver profiles on the Uber app. At least 14,000 trips were undertaken by drivers who were not authorised to do so. This significantly compromises the safety of passengers, not only because some of the drivers involved had previously been dismissed (and may have committed criminal offences), but also because all of those thousands of trips would not have been insured. It appears that this fraud has been able to take place due to the way in which Uber's technical systems operate both in London and globally. In addition, it is not considered that TfL can be confident that there are not any other cases of driver photo fraud and that all necessary steps have been taken to prevent it happening again.

166. This is considered to be a particularly serious breach of the licensing regime and one of the most significant breaches by ULL to date.

#### (c) Other regulatory breaches

167. ULL's Assurance Reports include details of regulatory breaches that have occurred in each relevant period, including the root cause and ULL's action plan to ensure that they do not happen again.

168. The December 2018 report recorded 152 regulatory breaches that occurred during the period 26 June to 30 November 2018. The 152 breaches in total were:

- a) 47 breaches which included the breach of the condition 12b duty to notify any decision to suspend or remove a driver from the platform within 48 hours;
- b) 85 breaches of Regulation 9(4)(c) obligation to notify all driver removals from the platform within 14 days;
- c) 5 breaches of insurance obligations;
- d) 7 bookings carried out by vehicles without valid PHV licences or valid insurance certificates;
- e) 1 case of a driver driving with a disqualified DVLA licence.

169. Although they did not appear in the December 2018 Assurance Report, during the period between 1 January 2018 and 30 November 2018, there were also a further 23 cases of fraudulent documentation provided to, and approved by, ULL.

170. The June 2019 report recorded 50 regulatory breaches as having taken place in the period between 1 December 2018 and 31 May 2019. They were:

- a) 25 breaches of condition 12(b);
- b) 2 breaches of regulation 9(4)(c);
- c) 8 breaches of the obligation to ensure that bookings are accurate and complete;
- d) 7 breaches of the obligation to ensure that vehicle records are accurate and up to date (2 of which were driver fraud involving MOT or PHV licences discussed further below);

- e) 2 breaches of the obligation to ensure that driver records are up to date;
- f) 4 breaches of obligation to ensure that ULL holds records of current certificates of insurance for each vehicle operated;
- g) 1 breach of the obligation to ensure that bookings accepted by ULL are allocated and carried out by TfL-licensed vehicles and drivers; and
- h) 1 breach of the obligation to ensure that ULL provides accurate information to passengers about the driver and vehicle assigned to their booking.

171. The June 2019 report also provided detailed analysis of the 23 cases of fraudulent documentation provided that had been approved by ULL between 1 January 2018 and 30 November 2018 broken down by breach category. These 23 cases included:

- a) 2 incidents where a driver uploaded a fraudulent private hire driver licence and trips were dispatched to the driver whilst that document was active on the driver's account.
- b) 2 incidents where a driver uploaded a fraudulent vehicle document (MOT certificate or private hire vehicle licence) and trips were dispatched to the vehicle whilst that document was active on the driver's account.
- c) 19 incidents where a driver uploaded a fraudulent insurance document and trips have been dispatched to the vehicle whilst that document was active on the driver's account.

172. The June 2019 report referred, in detail, to Programme ZERO and demonstrated the positive impact of it in a chart showing that breaches of condition (other than condition 12b) had reduced from 38 in the first quarter of 2018 to 14 in the first quarter of 2019, and to 3 in the first two months of the second quarter of 2019. It also referred to a gradual reduction of breaches of condition 12b since 1 January 2019.

173. Despite the positive downward trend ULL has demonstrated in the report, TfL has found 4 breaches that occurred within the date range of the June 2019 report that were not included in that report. ULL were informed of these breaches and confirmed their validity, including them in the October report.
174. Another area that causes some concern is a discrepancy with the timestamp data on driver suspension notices. TfL has discovered several examples where ULL appeared to have taken action against a driver, before the incident is alleged to have occurred. When TfL queried this with ULL, they advised that this was caused by human error when recording the incident details. Given that there have been several other discrepancies with the data provided from ULL, for example instances where licence numbers or names have been incorrect, and the relatively small window of time applied to condition 12(b), it is possible that there are other breaches that have been inaccurately recorded and have therefore gone unreported/unnoticed by ULL.
175. The October 2019 report identified 24 regulatory breaches that occurred between 1 June to 30 September 2019. They were:
- a) 17 breaches of condition 12(b);
  - b) 1 breach of both conditions 16 and 19;
  - c) 1 breach of the obligation to keep booking records accurate and complete;
  - d) 2 breaches of the obligation to appropriately action and respond to all vehicle suspension requests;
  - e) 2 breaches of the obligation that ULL holds records of current certificates of insurance for each vehicle it operates;
  - f) 1 breach of the obligation to ensure all driver records are accurate and up to date.

176. The October 2019 report also identified 27 regulatory breaches that occurred prior to 1 June 2019 but were not included in the June 2019 Assurance Report. These breaches were:
- a) 4 breaches of condition 12b (in all of these cases, reports were eventually made to TfL but a significant period of time had passed since the complaint was received; in one case, it was 147 days);
  - b) 2 breaches of conditions 16 and 19 where a driver uploaded a fraudulent insurance certificate and trips were dispatched to the vehicle whilst that document was active on the driver's account;
  - c) 8 incidents where insurance certificates were correctly but prematurely approved;
  - d) 13 incidents of driver photo fraud where an account profile picture was replaced with the image of a different individual and trips were taken.
177. TfL requested the raw data that supported the preparation of the June 2019 Assurance Report in order to verify the basis of the information that ULL was relying upon in that Report. Following a review of this information, TfL identified a further four breaches of condition 12b that are not included among the 27 incidents referred to above but occurred prior to 1 June 2019.
178. Further to this, TfL identified one additional breach that was included in the October 2019 Assurance Report but in respect of which TfL had not received any prior notification. TfL queried this with ULL on 21 November 2019. ULL confirmed that, due to a system or human error, there were seven notifications that had not been sent to TfL. Having received these cases, TfL immediately reviewed them and found that a number related to serious criminal allegations including, for example, an allegation of rape and other sexual assaults. This system error highlights the importance of complying with condition 12b which is in place to ensure that TfL is informed promptly on any safety related incidents involving a licensed PHV driver, so that it can make an immediate assessment to determine whether any licensing action

is required. At the most basic level, even if the relevant individual is removed from the ULL platform, if TfL does not know about the incident they could continue providing PHV services via another platform or app.

179. As this issue came to TfL's attention on 21 November 2019, these seven cases are still being investigated by TfL and appropriate licensing action will urgently be taken. It is also vital that ULL conducts a thorough and urgent audit of all notifications sent to TfL, whether they were sent within or outside the required 48 hour notification period, in order to determine whether further errors have resulted in notifications not being sent to or received by TfL. This is clearly a matter of significant urgency and concern if drivers are continuing to provide PHV services for ULL or any other operator despite an ongoing and live police investigation. This latest incident also raises concerns with the effectiveness of ULL's reporting systems.
180. It is of concern is that the assurance processes for December 2018 and June 2019 did not identify all regulatory breaches, even though they occurred during the relevant periods for each report, and there is no clear understanding to TfL as to why they were not identified and reported. Although the June 2019 Assurance Report points to the reduction in regulatory breaches since Programme ZERO has been introduced, the inconsistency in reporting of the number of regulatory breaches between each of the Assurance Reports makes it difficult to trust the accuracy of the data being shared and to have a clear picture of whether there have been improvements.
181. It is also of concern that there continues to be breaches of condition 12b even though the Board's Programme ZERO has a specific Workstream to eliminate such breaches, and has made a number of improvements in this area. This condition is particularly important to ensure the safety of passengers and therefore it is worrying that breaches continue to occur, albeit they have reduced.
182. In the December 2018 and June 2019 Assurance Reports, as well as in subsequent correspondence, ULL set out the steps it was taking to ensure

that such breaches did not occur and yet, it is apparent from the October 2019 report, that these changes have not been fully effective. A failure on ULL's part to dismiss drivers within the relevant time frame, or to notify that decision to TfL, raises real safety concerns for TfL. When incidents of this kind occur, it is essential that drivers are prevented from providing PHV services as soon as possible.

183. It is true that the number of regulatory breaches over the period between 1 January 2018 to 30 September 2019 has decreased. However, there continue to be an unacceptable number of breaches and ULL's failure to eliminate these is of serious concern.
184. ULL has said that it received 27,799 safety-related complaints out of 597,881 complaints between 1 December 2018 and 31 May 2019, it says that this should be seen against the backdrop of the total number of trips taken (██████████ trips between 1 December 2018 and 31 May 2019). However, even if the number of safety complaints is statistically small (when viewed against the total number of trips), the risks to the public arising out of unsafe driver conduct are significant. In its October 2019 Assurance Report, ULL said that it investigated 15,937 potential safety related complaints from passengers, of which 1,521 were classified as potential serious safety incidents. Of those cases, 1,113 met ULL's criteria for reporting to TfL and only 17 of those cases were not reported to TfL within 48 hours, constituting a 99.89333% compliance rate. Whilst it is recognised that the non-compliance rate is small by reference to ULL's size as a whole, the absolute number of incidents, 17, is not small.
185. Overall, it is disappointing and of concern that any breaches of any kind have occurred since the Chief Magistrate granted ULL a licence in June 2018.
186. As set out above, the ULL Board is seeking to eliminate further breaches through Programme ZERO and details the work it has done in the October 2019 Assurance Report. TfL recognises that ULL has made changes to ensure that regulatory compliance is at the forefront of its operations.

187. However, the fact that there have been a significant number of regulatory breaches in the period since the Chief Magistrate granted ULL a licence, does not suggest that the changes made by senior management have been fully embedded within ULL, or fully successful in achieving their goal.
188. In addition, the fact that TfL has identified further breaches, and has had to request the data supporting both of the December 2018 and June 2019 reports, does not offer confidence that the changes being put in place by the ULL Board will successfully reduce the number and occurrence of regulatory breaches to a zero (or *de minimis*) level. This is concerning, because many of these breaches are safety-related and could put passengers at risk.
189. Together with the matters set out above, the scale and seriousness of the breaches in question cast doubt on ULL's fitness and propriety to hold a PHV operator's licence.

#### **(b) ULL's Assurance Reports**

190. As described above, one of the conditions imposed by the Chief Magistrate on ULL's licence was that it should provide biannual Assurance Reports to TfL. The function of those reports, at least in part, is to provide TfL with an overview of ULL's systems and their operation in the past six months. That provides TfL with visibility in relation to any breaches of the licensing framework and assurance and confidence as to the fitness and propriety of ULL.
191. There has been an iterative process in terms of the quality and transparency of those reports. The December 2018 report was difficult to read because information about each of the regulatory breaches are spread across several pages in table form. The report was incomplete as it did not refer to the drivers involving the lack of insurance, and did not offer a critical review of ULL's performance.
192. TfL set out its views about the December 2018 Assurance Report to ULL in a letter dated 30 April 2019 (see Appendix 16) and suggested a number of



matters that should be addressed in the next report. The June 2019 Assurance Report reflected many of those changes and provided more useful material in a more accessible format. Nonetheless, TfL still did not find the June 2019 report easy to interpret. Issues listed in the report are split into several sections and the number of incidents is not easy to correlate to the individual driver dismissal notifications that are sent to TfL as and when they occur. TfL has, as a result, now had to request a single spreadsheet from ULL listing all the incidents detailed in various sections of the June 2019 report so it can cross check these against individual reports provided to TfL (when a driver is dismissed).

193. Although the October 2019 Assurance Report is easier to read and more concise, there are a number of breaches that occurred between 1 December 2018 and 31 May 2019 but were not identified by the assurance process adopted for the June 2019 Assurance Report.
194. There are three features of the ULL Assurance Reports that cause TfL some concern. First, as set out above, the June 2019 Assurance Report included a number of extremely serious breaches relating to driver photo fraud in Appendix 2, as discussed above. The presentation of this critical issue in an Appendix to the report caused real concern, because it indicated that ULL either did not appreciate the seriousness of the breaches or (less likely) was seeking to minimise their significance. This is not a cosmetic point about presentation, but rather a serious issue as to whether or not ULL appreciates the nature of its obligations as a PHV operator and is able to identify a serious breach of the licensing framework which places customers at risk.
195. Second, as set out above, the June and October 2019 Assurance Reports have provided information concerning breaches in the period covered by the prior report. In practical terms, the December 2018 and June 2019 Assurance Reports have had to be subsequently updated in the light of new material showing that there were additional breaches of the licensing regime not identified at the time. It is recognised that, at least in principle, it is the nature of some breaches that they are not identified at the time. However, it

is of concern that there is such a strong pattern of retrospective identification and reporting of breaches by ULL. This undermines any confidence that could be placed on the reliability of ULL's systems and in ULL's ability to identify and address breaches rapidly. In addition, it questions the confidence that can be placed on the October 2019 report having fully captured all breaches that occurred during the relevant period.

196. Third, as set out above, it is of concern that due to the lack of a centralised tool to store and access relevant information about drivers' complaint histories, as observed during TfL's visit to ULL's London office, ULL is unable to accurately find and analyse complaints on a driver's record and to categorise them appropriately on every occasion that it might need to.

197. Taken together with the matters set out above, these issues give cause to question the confidence that can be placed in ULL fully identifying issues of relevance in the Assurance Reports. TfL has had to request the raw data to support the June 2018 Assurance Report so as to satisfy itself as to the accuracy of the information included in it.

198. The commitment and resources that ULL has put into producing the Assurance Reports is recognised. However, these Reports have not provided the level of assurance necessary concerning ULL's ability to identify incidents, recognise their importance and address them rapidly. This reinforces the conclusions, set out elsewhere in this Note, that TfL lacks confidence in the reliability of ULL's systems and in ULL's ability to prevent significant breaches occurring in the future.

### **(c) TfL's attempt to obtain confidence about ULL's systems: the Cognizant reports**

199. At the time of the decision on 24 September 2019, TfL had a number of concerns about the extent to which Uber's systems are vulnerable to manipulation by drivers or other third parties, as discussed above. Since the Chief Magistrate granted a licence to ULL in June 2018, in addition to the driver photo fraud issue and document fraud issues described above, TfL

has received notifications from ULL of a number of instances in which drivers had been able to manipulate the Uber app or change it in some way, conferring on them some kind of improper advantage and potentially causing a risk to public safety. These notifications included:

- a) An unauthorised software patch (available on iPhones) by which drivers could see passenger destinations and select them on that basis (which, at the time, was not available to drivers before the trip had commenced). This patch was mainly used by drivers at airports. Although this came to ULL's attention in October 2017 and more was known about this issue by February/March 2018, there was no notification of this issue to TfL until TfL specifically asked ULL about it in July 2018 after it was brought to TfL's attention by a third party. By 4 June 2018, 750 drivers appeared to have early access to destination information in connection with at least one trip (see Appendix x).
- b) Manipulation and tampering of the location settings on a device which enabled drivers to fake their location at airports has arisen in many forms over the past 15 months. ULL notified TfL on 18 September 2018 (see Appendix ) of a new process to prevent tampering with the app (for the purpose of jumping airport queues or finding out destinations before the trip has begun). That process is termed the use of post online blockers.
- c) Creation of duplicate accounts by suspended or dismissed drivers. On 20 August 2018 (see Appendix 7), ULL informed TfL of six cases where drivers who had been dismissed from ULL were able to take further trips on the app (the total number of trips that ULL told us had been taken by the drivers was 36). A flaw in ULL's systems relating to a data lag that did not allow the system to carry out the necessary compliance checks on drivers, allowing dismissed drivers to create duplicate accounts under different names was identified as the cause. A further example of this behaviour was referred to in ULL's email to TfL about the driver photo fraud issue dated 25 October 2019 – see above.

- d) Bookings allocated to a PHV vehicle that had an expired licence and another vehicle that had been suspended by TfL were brought to TfL's attention by ULL on 9 November 2018 (see Appendix 8a), and a further incident involving an expired insurance certificate. ULL stated that the issues were caused by a software bug following the rollout of its new driver app. Although there were a number of other processes and controls that were not in place allowing these issues to arise and those at c) above, they are related to the apparent ease with which drivers are able to manipulate Uber's systems. TfL acknowledges that several steps were taken by ULL to prevent this from happening again, but considers that there were systemic weaknesses within ULL's systems that enabled this to occur.
- e) A YouTube video – on 14 November 2018 (see Appendix 8b), ULL shared a YouTube video with TfL where the speaker explains how an Uber driver can fake their location into an airport.

200. ULL had also drawn TfL's attention to attempts to compromise ULL's cyber security which included:

- a) Driver Waybills - potential breach of personal data that occurred on 30 August 2018 following the roll out of a new security feature across Uber globally which was designed to deny unauthorised login requests and was to be the first level of defence against massive 'brute force' tools; the new feature did not function properly, and as a result, Uber's second layer of defence against these types of attacks, two factor authentication, was not triggered. During this time, account logins were made by what appeared to be a bot or bots. ULL's investigation found that access to a driver's "Waybill" occurred. A "Waybill" provides information about a driver and the driver's most recent trip, including, in some instances, the driver's licence number. However, ULL was not able to clarify whether accesses to the Waybill were unauthorised.

201. In light of these incidents, TfL concluded that during the two-month licence period it should carry out a review of the maturity of ULL's systems and its cyber security in order to better understand the controls and processes that

ULL had in place. By taking this step, TfL sought to obtain assurance that the problems identified above would not recur. TfL recognised that ULL is a large operator and that the number of incidents described above were small by reference to the overall number of journeys completed by ULL. However, some of the issues described above are of the utmost seriousness and raise real public safety concerns for TfL.

202. More recently on 6 November 2019 (see Appendix 43), ULL notified TfL of a global phishing scam targeting drivers using the Uber app. ULL explained that one of types of fraudulent activity carried out once the driver's account information is obtained is to fraudulently manipulate their device's GPS signals, allowing it to start a trip and create a fictitious journey for which the passenger is then charged. ULL explained the work it was doing to address this but it further highlights the ease with which fraudsters appear to be able to manipulate the Uber app.

203. TfL already had some understanding of ULL's change management and product development processes. In both of its 2019 licence applications, ULL referred to the requirement that any proposed changes to the app are communicated through a Product Review Document ("PRD"), which is provided to relevant stakeholders, prior to any product or feature being developed. PRDs must be reviewed by Product Counsel, Privacy Counsel, local Regulatory Counsel and Support and other reviewers, which ULL says ensures that cross-functional partners are brought into the product development cycle early. ULL's Product Experience team based in London manages the roll-out of products and features in the UK, which might impact ULL's regulatory obligations, and acts as the interface between Uber product and engineering teams based in San Francisco (UTI), central teams in Amsterdam (Uber BV) and the local team (ULL). If a PRD is considered appropriate for London and assessed to be material, it is managed through ULL's Product, Policy and Process and Change Management policy which requires ULL teams to complete a Change Approval Document along with a draft notification to TfL summarising the change and potential risks,

especially potential risks that relate to Condition 5 as well as the wider 1998 Act.

204. TfL's July 2019 licence application explained that, when the product or feature is ready for launch, the Product Experience team based in London will prepare a UK launch strategy and gives notification to TfL in accordance with condition 5. After the product or feature is launched, ULL closely monitors it for 2 months to ensure it is working as intended and is not causing unforeseen impacts. ULL said that it has conducted training to ensure the process it has adopted for material changes is followed and ensure new staff are aware of it. The process has also been shared with senior personnel in the wider Uber group who are responsible for product development.
205. ULL has also provided TfL with information about its software release management process which is used for new versions of the "RiderApp" and "DriverApp". The process involves a sequence of checks and steps involving multiple teams before new software is put into production.
206. In its June 2019 assurance report, ULL referred to the Uber London Governance and Policy Framework which sets out the policies, processes, governing bodies and assurance activities ULL has in place to support good governance and "specifically to adhere to the compliance requirements associated with holding an operator's Licence". The report also referred to the Compliance Working Group which was set up in July 2018 and oversees:
- a) planned and unplanned changes to the App and Uber products offered in the UK;
  - b) any proposed act, omission or conduct which could have implications for ULL's PHV responsibilities;
  - c) any change or event or any fact, matter of circumstance that ULL considers is reasonably likely to have an adverse impact on compliance with its PHV responsibilities.

207. These processes, and ULL's explanations of them, are important. However, TfL considered that it lacked sufficient expertise, on its own, adequately to assess whether or not ULL's systems and processes were appropriate for a company in its position. TfL notified ULL at a meeting held with ULL shortly after the decision to grant a licence of two months that it proposed to appoint an independent company to undertake a review of ULL's systems. TfL also shared the Terms of Reference for the technical review with ULL and all parties met to discuss next steps.
208. On 3 October 2019, TfL instructed Cognizant to carry out a maturity assessment and cyber security review of ULL's systems. Cognizant is a leading professional services company, with recognised expertise in cyber security and systems management. TfL asked Cognizant to:
- a) Assess the maturity of ULL's Change, Release, Incident and Problem management processes and for each of these service elements, there will be a documented process and evidence available showing:
    - (1) how each service element is performed;
    - (2) how impact and risk is assessed; and
    - (3) that processes exist to reverse changes that are unsuccessful.
  - b) Assess the maturity of ULL's information security control framework by looking for adherence against relevant Cyber Security Control Policies, with consideration towards the ISO/IEC 27001 Framework, the Cyber Essentials Scheme or HM Government Information Security Assurance Standards to understand ULL's current cyber security position
209. TfL also provided Cognizant with a number of emails from ULL identifying the types of manipulations that had occurred since June 2018.
210. Cognizant completed its reports – the IT Service Management Report (Appendix 45) and the Security Maturity Assessment (Appendix 46) on 15 November 2019. The conclusions of the Cognizant Security Maturity

Assessments were positive, and demonstrated that ULL was at or above the level of performance and reliability that would be expected of a company in its position.

211. Cognizant assigned Uber and ULL a maturity level between 0-5. A maturity level of 0 (incomplete) indicates the activity is not performed. Its conclusions were:

- a) Uber was rated Level 3 (Managed) for Vulnerability Management which means that Uber performs Vulnerability Management processes in a planned manner and has sufficient resources to support and manage it. Cognizant expected a global service provider like Uber to be at process maturity score of at least 3, and observed that Uber's Vulnerability Management process meets the expectations
- b) Uber was rated Level 4 (Measured) for Network Security, which means that Uber performs Network Security checks in a planned manner and manages and monitors the outcomes. Cognizant expected a global service provider like Uber to be at process maturity score of at least 3, and observed that Uber's Network Security Management process exceeds the expectations.
- c) Uber was rated Level 3 (Managed) for Cybersecurity Risk Management, which means that Uber performs Cybersecurity Risk Management processes in a planned manner and has sufficient resources to support and manage them. However, Cognizant expected a global service provider like Uber to be at process maturity score of at least 4, and observed that Uber's Cybersecurity Risk Management process falls short of expectations.
- d) Uber was rated Level 4 (Measured) for Security Incident Management, which means that Uber performs Security Incident Management processes, in a planned manner, manages and monitors the outcomes. Cognizant expected a global service provider like Uber to be at process



maturity score of at least 3, and observed that Uber's Cybersecurity Risk Management process exceeds the expectations.

212. The Security Maturity Report identified a number of strengths and weaknesses within ULL's systems. However, the overall outcome was that this report provided TfL with sufficient confidence that ULL has adequate systems in place in relation to vulnerability management, network security, cybersecurity and serious incident management.

213. The second Cognizant Report, the IT Service Management Report, did not provide TfL with the same level of confidence:

- a) It assessed ULL's Change Management systems at Level 2 (Awareness), whereas it expected a global service provider like Uber to be at a process maturity score of 3.
- b) It assessed Uber's Release Management (the planning, design, build, configuration and testing of applications and services) at level 2, whereas it expected Uber's systems to be at level 3.
- c) It assessed Uber's Incident and Problem Management performance at level 3; consistent with Cognizant's expectation for a company in Uber's position.

214. In relation to ULL's Change Management systems, Cognizant observed the following major gaps in the existing change process:

- a) Change tracking controls with regard to London were immature: it said that global change is tracked using Google Sheets which has audit history but industry best practice is to use tools with individual access control to prevent status change by error.
- b) The LOMC, responsible for approving changes for London, has dependency on Uber's Global engineering team to provide technical assistance while assessing change with regard to London regulations.

- c) Although change prioritisation with regard to regulatory requirements are given high priority by the local operation team to sustain risk manually, permanent technical change fixes are often observed as low priority.
- d) The design review process is immature. For example, suspended vehicles were able to take bookings and drivers were able to change photographs after disabling GPS as a result of an inefficient design review process.

215. Cognizant said that these process gaps can have severe consequences, such as:

- a) The LOMC may approve a change based on information provided, whereas the technical solution can impact London's specific regulatory or legal requirements
- b) Accidental approval or rejection on the change tracker spreadsheet can allow a feature to be enabled in London where as it should not be.
- c) Manually containing any security risk may not be adequate, technical solution should be priority if not defined.

216. In relation to Release Management, Cognizant said that it observed well-established procedures to make technical product related changes and releases, extensive product testing was observed in a non-production environment, Beta testing focused on product stability largely in the US. However, Cognizant observed the following major gaps in the existing release process:

- a) Ad hoc and minimum testing done by the local operations team while enabling any feature for London users. Informal communication channels to confirm test success over email. No detailing of test scenarios considered was observed.
- b) Cognizant could not establish defined roles and responsibilities for release management especially between the release manager and London

Operation team. The Global Engineering team has minimal involvement while any new feature is configured for London area. Dependencies between changes are managed by product owners rather than release managers. The release manager does not have visibility of functional changes going in the release.

- c) Cognizant expected Uber to enable Forced upgrade of their app on a regular basis to ensure drivers and passengers are on latest app version and any vulnerabilities available in previous versions are not exploited by users. However, no objective guidelines existed to enforce Force upgrade; it is decided on a case-to-case basis. An objective framework that includes nature of change and impact of change as criteria should be defined.

217. Cognizant said that these process gaps can have severe consequences, such as breaking existing London specific configuration while introducing new features and the London Operations Team may not get adequate support from release management and any London specific feature might be delayed/ dropped.

218. In relation to Incident & Problem Management, although Cognizant scored the Uber process at Level 3 (which is the level that Cognizant expected ULL to achieve), Cognizant observed the following gaps in the existing incident & problem management process:

- a) It is difficult to differentiate between incidents and user service requests.
- b) Global processes were allowed to override local processes and access, e.g. a team other than London Regulatory was allowed to reactivate Suspended Vehicles. Cognizant observed that access restriction was later implemented for reactivating Suspended Vehicles but concluded that there is a risk of similar process vulnerability existing across other process area.

- c) Multiple disjointed tools are used by different teams making it challenging to trace end-to-end incident lifecycle
219. Cognizant said that these process gaps can have severe consequences, such as:
- a) Lack of major incident management definition can result in delay in escalated to technical teams and timely resolution.
  - b) Lack of traceability across incidents will add additional time to investigate any high priority incident.
  - c) Access to sensitive features, if available to a non-relevant team, can increase risk of regulatory and safety incidents.
220. As described above, TfL also observed some difficulties as a result of multiple disjointed tools when it visited ULL's London offices on 15 October 2019. TfL notes that it does not have the same level of expertise as Cognizant, in this area, and it considers its own observations to be merely confirmatory of what Cognizant has found.
221. TfL shared the final version of the Cognizant reports with ULL on 15 November 2019 and invited ULL to comment and to identify any points it considered to be inaccurate. ULL responded on 19 November 2019 (see Appendix 47) setting out a number of points.
222. ULL said that it was confident that the areas for development identified by Cognizant have not and do not directly pose a risk to public safety, but as part of its commitment to continuous improvement, recognises that there are areas identified by Cognizant where its processes and systems could be further strengthened. It gave examples of the steps it would take to address these, and in some cases, have already taken. These steps included introducing a UK-specific Regression Test Suite to ensure that existing product functionality has not been inadvertently degraded by a technology release and that new products or changes to existing products do not

adversely affect existing functionality and the testing will be carried out by technical analysts focused on the UK; that Regression Test Reports are reviewed by LOMC prior to any product launch; the implementation of an enterprise-wide Governance, Risk Management and Compliance (GRC) solution called 'Servicenow', and the first module, Issue Management, is targeted to go live in January 2020, followed by subsequent modules, including Compliance Management and Risk Management, later in the year; the expansion of the scope of ULL's current ISO27001 certification to include passenger and driver systems.

223. ULL also identified what it considered to be a number of inaccuracies in the report, and attached a spreadsheet detailing the inaccuracies and misinterpretations which ULL considered to be material across the Release Management, Change Management and Cyber Risk sections, together with specific evidence for its position. In its letter, ULL gave examples of the inaccuracies in the Release Management workstream because it believed these inaccuracies had the most significant impact on the maturity score that Cognizant attributed to the processes. These included:

- a) Risk and Deviation Management: Cognizant recommends (see ITSM Assessment Report - page 10) that London-specific regulatory requirements should be embedded (or embedded more deeply) as part of the product development lifecycle. ULL said that it discussed and demonstrated in several sessions that London-specific regulatory requirements are already a part of the Product Development Lifecycle via a notification to LOMC.
- b) Change Prioritisation: ULL did not accept Cognizant conclusion that permanent technical change fixes are often observed as low priority, and referred to Programme ZERO which involves close collaboration between the ULL and San Francisco teams to prioritise the technical changes considered most important to the reduction of regulatory risk for ULL, which were then delivered over the course of 2019. It said that the 71%

reduction in breaches since Q1 2019 (when Programme ZERO was initiated) demonstrates the effectiveness of this approach.

224. ULL said that a further review of the Release Management workstream taking account the points it had made would result in a Level 3 rather than a Level 2. ULL also stated that:

- a) It considers Cognizant's review to have been undertaken within an unusually compressed time frame, which it considers has contributed to what it believes are specific factual inaccuracies and appears also to have led, in ULL's view, to a number of incorrect conclusions across the report.
- b) It could demonstrate that ULL has strong and robust processes and mechanisms to effectively manage cyber risks. It said that although Cognizant considered there was limited evidence of improvement initiatives, security risks, action items, issues, and decision points are discussed regularly during the Security Risk and Compliance Committee meetings, which is chaired by the Head of Security Assurance.
- c) It supported the principle of independently testing the effectiveness of processes and systems across PHV operators in London as appropriate. It provided some observations that it said may be helpful for future assessment which included a longer time-span and a greater focus on benchmarks relevant to London private hire to ensure that the operator being reviewed is able to provide assessors with the information they require to fully and reasonably assess the effectiveness of its processes and systems against clearly defined and relevant benchmarks.

225. On 21 November 2019, ULL also sent to TfL a set of slides which provided additional information in areas where Cognizant suggested weaknesses (see Appendix 48).

226. TfL provided Cognizant with the submissions and material provided by ULL and asked Cognizant to consider these submissions and give its views on them. TfL asked Cognizant whether any of the points raised by ULL led it to alter its conclusions. Cognizant provided its comments on 21 November 2019 (see Appendix 51) and said that it had carried out a thorough review of the points raised by ULL along with the new evidence shared, and this new information has no material impact on the assessment observations or ratings in the Report. Cognizant does not consider that there should be any change to the Report. Cognizant also said that the evidence shared by ULL is largely the same as that it had reviewed during the workshops except for two new items which it concludes have no significant bearing on the assessment ratings. It also said that the observations in its report are a commentary based purely on the evidence shared and scenarios considered during the assessment workshops.
227. Cognizant provided its observations on the specific points made by ULL which are in Appendix 52 and have not been repeated here.
228. Cognizant also referred to the two new items of evidence that ULL has referred to: the “Cascade screenshot to track configuration changes” and “Security Risk and Compliance Committee meeting notes”. While these substantiate the assertions ULL has made, Cognizant concludes that it is difficult to conclude that “these are practised as a process without due investigation”. However, even on the assumption that these are practised rigorously, Cognizant does not consider that it affects the overall ratings described in the Report.
229. Cognizant commented on the statements within the original report that ULL has described as speculative. It agrees that the risks or consequences outlined in the report are speculative. However, this is deliberate (and unsurprising). Cognizant explained that, whereas the process weaknesses in the report are solely based on evidence, the possible risks and consequences arising from these weaknesses are necessarily speculative in nature. Consequently, Cognizant said that it has supplemented this

information with the risk severity and probability of the risk occurring, so as to provide a robust picture.

230. Cognizant also considered that there are a few specific observations made by ULL, which it believes are a result of misinterpretation on ULL's part, and hence required further clarification which it provided in its response which is at Appendix 51.
231. In relation to the overall approach to the assessment adopted by Cognizant, Cognizant agreed that there is merit in the risk-based approach suggested by ULL, but said that in its experience, it suggests that the hybrid approach that it adopted for this assessment is better suited because a stand-alone risk based assessment would be both incomplete and also ineffective in ironing out the process gaps that can translate into major risks in due time.
232. Cognizant said that it compared ULL's processes by reference to industry standards and identified the strengths and weaknesses in ULL's processes. In addition, it aligned these weaknesses with potential risks, from TfL's perspective, thus making it more outcome focussed. It offered a suggestion as to the way in which maturity assessments could be carried out.
233. Cognizant acknowledged that the provision of more time for a more thorough assessment would allow the organisation being assessed more time to provide requested information and for Cognizant to perform discovery and analysis of shared information.
234. It is noted that ULL strongly disagrees with the conclusions in Cognizant's reports and has highlighted areas that it considers to be either inaccurate or incomplete. A meeting took place between TfL, Cognizant and ULL on 22 November 2019 to discuss the report. Following that meeting, Cognizant wrote to TfL (see Appendix 52) to confirm that the information provided by ULL does not lead it to make any material changes to the IT Service Management Report. It said none of the ULL's submission or evidence caused it to change its view and, on the contrary, the evidence provided by



ULL at the meeting served to support Cognizant's understanding and assessment.

235. Cognizant acknowledged that the new evidence on security shows there are mechanisms to monitor security processes and controls, but said that it was difficult to trust the authenticity of evidence unless Cognizant does a thorough investigation. However, it confirmed that even if this new evidence were accepted at face value, it would not change the overall ratings in other areas such as the Risk Register and GRC tool which Cognizant has highlighted are still weak areas. Cognizant said that it would explain certain issues in more detail on 25 November, although this is likely to be received after the decision concerning ULL's fitness and propriety is made. However, the bottom line is that Cognizant has confirmed that its assessment as to ULL's IT Service Management maturity remains the same.
236. Following the meeting with Cognizant, ULL's General Manager for Northern and Eastern Europe sent an email attaching the notes of the meeting (see Appendix 53). The email notes that all have been working to unusually tight timeframes on this matter. It said that it is ULL's strong view that a more thorough review - with due consideration given to all evidence available - would have resulted in a 'meets expectations' for ULL outcome across all areas.
237. The email said that ULL is committed to the principle of independent testing and to using this feedback to continuously improve its systems and processes. It reiterated the submissions it made on 19 November 2019 that it has already committed to deploying a number of features to further strengthen its processes, including implementing the "Servicenow" GRC solution and to extending its ISO certification to more passenger and driver systems, as well as the regression testing.
238. Shortly after the meeting with Cognizant on 22 October 2019, TfL had a meeting with ULL during which ULL reiterated its concerns about the conclusions of the Cognizant assessment and the time that was available for a thorough review. On 23 November 2019, the Chair of the ULL Board wrote

to TfL (see Appendix 54) and confirmed that the Board had discussed the Cognizant report in detail and said that whilst it does highlight some areas where ULL must and will improve, the Report gave the Board no reason to question the underlying safety and security of Uber's systems and processes, which ULL has and continues to scrutinise intensely through the bi-annual Assurance Reports and monthly review of safety and compliance. Ms Powers-Freeling said that she and the Board are personally committed to ensuring ULL continues to improve and lives up to the high standards TfL rightly expects.

239. However, as explained in the sections above, TfL considers that, on the basis of the Cognizant Reports, there are a number of weaknesses in ULL's systems. These weaknesses described in the reports do not provide TfL with confidence that serious breaches and issues of the kinds described above will not occur again in the future.

## **6. TFL'S CONCLUSION IN RESPECT OF ULL'S FITNESS AND PROPRIETY**

240. Taking into account the totality of the evidence above, it is recommended that TfL concludes ULL is not fit and proper to hold a PHV operator's licence at the current time, and its licence should not be renewed.

241. ULL's recent track record in relation to breaches of the licensing framework raises serious concerns in relation to public safety. It is recognised that ULL has taken steps to address the historic causes of those breaches. However, the number, pattern, seriousness and causes of the breaches raised serious concerns for TfL as to ULL's ability to prevent such breaches recurring in the future.

242. This was why TfL commissioned the Cognizant reports. TfL hoped that the Cognizant reports would provide it with confidence that ULL is now in a position to prevent similar breaches and issues arising again. The Cognizant reports have indeed provided confidence as to ULL's Cyber Security Systems. However, the IT Service Management Report has led TfL to conclude that it does not have sufficient confidence in ULL's ability to prevent

future breaches. As set out above, a significant number of the historic breaches have derived from the introduction of new or amended versions of the Uber app. The Cognizant ITSM Assessment has identified this as an area of weakness, in which Uber's systems do not meet the standard that it would expect. It is not possible to be confident that further, serious breaches of the licensing framework will not occur, or have not already occurred but have not yet been identified or reported to TfL, placing passengers in London at an unacceptable level of risk.

243. It is therefore recommended that TfL concludes ULL is not a fit and proper person to hold a PHV operator's licence.

## 7. NEXT STEPS

244. ULL may appeal a decision not to grant a licence. Section 26(1) of the 1998 Act states:

“If any decision of the licensing authority 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.”

245. The purpose of section 26(1) 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, until the time for appealing has expired or an appeal is disposed of or withdrawn, as if it had been a decision to renew. As such, ULL would be able to continue to operate pending any appeal process and in the interests of protecting public safety, they would be expected to comply the 20 conditions imposed on 25 September 2019 during that time. In particular, TfL would require ULL to

provide an Assurance Report every quarter, from the date of expiry of the current licence (25 November 2019). The next assurance report would therefore be due on 25 January 2020 covering the licensing period of 1 October to 30 December 2019.

246. Consideration has been given to whether TfL should exercise its power, set out in s. 26(2), to direct that ULL's licence should be suspended or revoked with immediate effect. Taking all the relevant materials into account, it is not considered that it is necessary or proportionate to exercise that power, in this case. We note that ULL has put system fixes in place to prevent any further driver photo fraud issues arising, and that through Programme ZERO, it is working hard to reduce and eliminate regulatory breaches. TfL will continue to closely scrutinise ULL and its compliance with the 20 conditions for the duration of any appeals process.

## **8. EQUALITIES**

247. In reaching the recommendations in this Note, due regard has been given to TfL's obligations under equalities legislation including the public sector equality duty in section 149 of the Equality Act 2010. TfL is obliged to have due regard to:

- a) The need to eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Equality Act.
- b) Advance equality of opportunity between people who share a protected characteristic and those that do not.
- c) Foster good relations between people who share a protected characteristic and those that do not.

248. The PHV trade attracts a high number of drivers from BAME groups. That is confirmed by the national census, which shows that a high proportion of taxi and private hire drivers are from BAME groups. Analysis of the market for PHV drivers indicates that a particularly high percentage of PHV drivers were

born outside the UK. ULL's drivers account for a significant share of the total number of drivers

249. The private hire industry is mostly made up of male drivers. For the PHV market, the estimated number of female drivers is 2,361 compared with 105,352 male drivers. The estimated number of male PHV drivers who work for ULL is just over 38,500. This accounts for 35% of the total number of drivers. Private hire drivers tend to be self-employed and free to move between private hire operators or work for more than one operator at a time. Many private hire drivers work in the industry part-time to supplement other income. However, we do not have statistics to understand how many are part-time, how many are full-time and how many work solely for ULL.

250. A decision not to grant ULL a PHV operator's licence will have a disproportionately negative and very substantial impact on BAME groups, and male drivers. Assuming that a decision not to grant ULL a PHV operator's licence is upheld, those drivers will no longer be able to work for ULL, as it will no longer have an operator's licence.

251. This impact has been carefully, and its seriousness is recognised. It is considered that the impact will be mitigated, at least in part, by the following factors:

- a) The appeal process. Should ULL appeal, it will – pursuant to section 26(1) of the 1988 Act - be entitled to continue to operate pending the determination of that appeal. We consider that ULL would be likely to do this as this is what it did pending the last appeal in 2017/18. Nonetheless, if the decision is upheld, this will only delay the impact on ULL drivers, who may ultimately lose their livelihood. If an appeal is brought, they will have the benefit a longer period of forewarning about the possible permanent loss of ULL's licence.
- b) The opportunity to drive for another operator. If ULL's appeal against the loss of its licence is not successful, some PHV drivers are likely to be able to find work with other operators, noting that over the past 17 months,

there are new large app-based operators who have been given PHV operator's licences. Given the significant scale of ULL, there will be a shortage of capacity in the market, some of which may be taken up by other operators. PHV drivers are entitled to drive for any operator, or more than one operator, and it is considered that at least some drivers will take advantage of that opportunity. However, we recognise the limited extent to which this will mitigate the impact of a decision not to grant a PHV operator's licence to ULL.

- c) The opportunity to drive for another Uber entity. It is at least possible that some ULL associated drivers will shift over to work for UBL, if ULL's appeal is not successful. We cannot predict the magnitude of that switch, which will require drivers to obtain licences from another authority and will also be within Uber's control.

252. None of this undermines the extremely serious impact that a decision not to grant a licence to ULL would have on BAME and female ULL drivers. We do not consider that this can be mitigated in its entirety and recognise that it will have a substantial and detrimental impact on their livelihoods.

253. We have carefully considered the obligation to advance equality of opportunity between persons who share a protected characteristic and those who do not. We consider that many of the factors set out above are also relevant to this element of our s. 149 duty.

254. The demographic of ULL's customers is disproportionately young people. A decision not to grant ULL an operator's licence would therefore have a disproportionately negative impact on young people who will no longer be able to use ULL's services in London. There may be a disproportionately adverse impact on those ULL customers who are elderly and/or disabled and who rely on ULL's services for transportation across London.

255. We have also had regard to TfL's obligation to have due regard to the need to eliminate discrimination, harassment and victimisation. A decision not to grant a licence to ULL, which may lead to an overall decrease in the

availability of PHV services in London, may contribute to an increase in on-street harassment, particularly in the evenings after some of the Underground lines have shut and the bus services have shifted to the Night Service. There is likely to be a shortfall in PHV services, in relation to demand, in the near future (given the size of ULL's share of the market) and we recognise that this may lead to an increase in individuals being unable to travel home. This makes them increasingly vulnerable to on-street harassment, particularly in unfamiliar locations. Such negative effects may be pronounced for disabled persons, women, pregnant women and members of ethnic minority

256. We have had regard to the need to foster good relations between persons who share protected characteristics and those who do not. We do not consider that a decision as to ULL's licence will have a meaningful impact in this respect.

257. Despite the very serious and substantial impacts set out above, the statute requires TfL to be satisfied that an applicant is 'fit and proper' before granting that applicant a licence. For the reasons set out in this note, it is considered that ULL is not fit and proper, and therefore TfL would be obliged to refuse the licence, notwithstanding the impacts identified.

## **9. RECOMMENDATIONS**

258. It is recommended to TfL that it makes the following decisions:

- a) TfL concludes that ULL is not a fit and proper person to hold a PHV operator's licence and refuses to grant ULL a PHV operator's licence at the expiry of its current licence.
- b) TfL does not exercise its powers under section 26(2) of the 1998 Act to suspend or revoke ULL's licence with immediate effect, as it is not necessary or proportionate to do so.

## 10. DECISION

259. Pursuant to the general delegation given to me under TfL Standing Order 131A and the written consent from General Counsel to discharge any function of TfL relating to private hire vehicles, and taking into account the above, I conclude that ULL is not a fit and proper person to hold a PHV operator's licence and hereby refuse to grant a PHV operator's licence to ULL. Additionally, it is not necessary or proportionate for TfL to exercise its powers under section 26(2) of the Private Hire Vehicles (London) Act 1998 to suspend or revoke ULL's current PHV operator's licence with immediate effect.

Signed

A solid black rectangular box redacting the signature of Helen Chapman.

Helen Chapman

Director of Licensing, Regulation and Charging

Dated

25.11.19