Are we there yet? Uber's trips through the English courts

Uber has argued in the courts one way and then another way - quite at odds with its first position - over the company's status but with no luck to date, as **Philip Kolvin KC** explains

Uber was incorporated in 2010. By 2025 it worked in 70 countries and 15,000 towns and cities, with 180 million active customers generating 13 billion trips annually, producing nearly $200 billion in fares annually. Operating in a highly competitive market, like any company, it has had to reduce its costs, both absolutely and relative to its competition. In England, this has resulted in and explains one of its more frequent trip destinations: the courts. Having the means and incentive to litigate against regulators, competitors and even its own drivers has spawned a series of cases across fields as diverse as employment, VAT and licensing, each relating to the other, whether legally or commercially or both.

The latest outing, in the Supreme Court in the case of *D.E.L.T.A Merseyside Limited v Uber Britannia Limited*,[1] completes the circle of litigation regarding one vexed question: must a PHV operator contract with their customer, to which the answer is yes and no, depending on whether you mean inside or outside London. But it does not end Uber's journey through the courts, with critical hearings regarding VAT to come. In deference to the name of this journal, this article focuses on the Supreme Court licensing appeal, while placing the case in the proper context of Uber's overall litigation journey.

Background

Uber, in its various corporate identities, provides or facilitates private hire vehicle journeys, but generally owns no cars and employs no drivers. Rather, it connects customers who want to take a ride with drivers who want to provide one. In a modern commercial era, this is par for the course: think booking.com, OnlyFans and Vinted, to take just three examples.

But it is not just a modern phenomenon. For decades, long preceding the internet, PHV operators have put drivers in touch with customers wanting a ride. Drivers would pay a "settle" to the operator for use of radio equipment, keep the fares paid by customers and account to the Inland Revenue for their profits, a practice long approved of by the Revenue, and later HMRC.[2]

The Uber model has resulted in litigation and legislation across the globe regarding worker classification. Is Uber working for drivers, who are independent contractors? Or are drivers working for Uber? Uber has fought strenuously, but not always successfully, to establish the former and refute the latter, principally to avoid the costs associated with employing workers.

Aslam v Uber

This tension bubbled to the surface in litigation brought by a London Uber driver, Mr Yaseen Aslam, under the Employment Rights Act 1996 claiming to be paid the minimum wage and to receive paid leave. His claim to be a worker depended in part on his allegation that Uber exerted control over what he did, including by fixing fares and applying sanctions if he turned down too many trips. Uber relied on drivers' autonomy, including where and when to log on and off, and where, when and for how long they wished to work.

The Employment Tribunal found for Mr Aslam, thinking it "faintly ridiculous" to say that Uber in London is a mosaic of 30,000 small businesses linked by a common platform. Uber appealed to the Employment Appeal Tribunal, alleging that the actual contractual relationship had been ignored. However, the Employment Appeal Tribunal, disagreed, as did the Court of Appeal on Uber's further appeal.[3] The Court of Appeal applied the decision in *Autoclenz v Belcher*,[4] which required focus on the true nature of the relationship and not just what was set down in the contract. The notion that drivers were working in business on their own accounts, was again dismissed as unreal. Clearly, Uber was not working for the drivers; the drivers were working for Uber and so were entitled to be treated as workers. The Court of Appeal said there was a high degree of fiction in the wording of the driver agreements: the true picture was that the control in the relationship lay with Uber, to whom the drivers were not providing services but were subservient.

And so, the Aslam litigation reached its final stage in the Supreme Court, where again Uber lost, for a fourth time.[5]

1 [2025] UKSC 31.

2 See eg, How VAT applies to taxis and private hire cars: VAT Notice 700/25. https://www.gov.uk/guidance/how-vat-applies-to-taxis-and-private-hire-cars-notice-70025.

3 [2018] EWCA Civ 2748.

4 [2011] UKSC 41.

5 [2021] UKSC 5.

Once again, Uber's argument that it was a mere agent for its drivers was rejected because it did not represent the reality of the situation. Drivers were workers and so were entitled to the minimum rights accorded to workers.

But this time there was a sting in the tail. For Uber tried to support its argument by suggesting that, as a matter of licensing law, it was perfectly permissible for Uber to be the operating licence holder but for the journey to be provided by the driver contracting as principal with the customer. This was conclusively rejected by the Supreme Court on the language of the Private Hire Vehicles (London) Act 1998.

Lord Leggatt, with whom all his colleagues agreed, stated that the language of the Act accorded the status of operator to anyone who accepted bookings for private hire vehicles. If Uber were mere agents for the drivers, then drivers were operators by virtue of accepting bookings through that agency relationship. To Lord Leggatt:

> *This suggests that the only contractual arrangement compatible with the licensing regime is one whereby Uber London as the licensed operator accepts private hire bookings as principal (only) and, to fulfil its obligation to the passenger enters into a contract with a transportation provider (be that an individual driver or a firm which in turn provides a driver) who agrees to carry out the booking for Uber London.*[6]

Lord Leggatt remarked on how Uber had adduced no evidence of an established practice whereby the operator acted as agent which the 1998 Act could be taken to have preserved, a plot point laid down only to re-emerge in the D.E.L.T.A. litigation.

Uber v Transport for London

One of the issues arising for Uber from the Supreme Court judgment was that Lord Leggatt's views regarding licensing were not the reason for the decision: in the language of lawyers they were *obiter dictum.*

So Uber decided to start a new case, this time against its London regulator, Transport for London, to get a definitive ruling on the point. It got one, but it was not the ruling it wanted.[7] The Administrative Court pointed out that much of the language of the 1998 Act was predicated on a contractual relationship between the operator and the passenger. To take one example, s 4 refers to "private hire vehicles and drivers which are available to him for carrying out [a] booking accepted by him." To the Court this may not be a statement in terms that the operator must contract as principal, but it contemplates that he will do so, and by applying a purposive construction to the Act, contemplation transmogrifies into stipulation. The Court was taken with the "powder and shot" argument, whereby the unfortunate passenger, left to contract with the driver, might be left standing roadside at night with no recourse but to sue a driver of which s/he had never heard and might not be good for the money anyway. This unfortunate eventuality is avoided if liability lies with the better resourced operator.

As a result of that ruling, Transport for London passed The Private Hire (London) Operators' Licences) Amendment Regulations 2022 which required operators to "enter into a contractual obligation as principal with the person making the private hire booking." Uber, alongside other operators, complied with the regulations and changed its terms to accept primary contractual responsibility.

D.E.L.T.A Merseyside Limited v Uber Britannia Limited

The London litigation left a tension between London and the provinces. In London, the situation was conclusively settled: operators must contract as principals. In the provinces there was no such stricture. However, Uber decided to commence a High Court claim for a declaration that all those operating in the provinces were obliged to contract as principals.

The reason why Uber did this is known to Uber but is a matter of speculation for others. What seems likely is that Uber had to change its app terms to comply with the London judgment and thought it too technically complex or confusing to its customers to have different terms depending on whether the vehicle supplied was licensed in London or elsewhere, so decided to operate a uniform business model nationwide. That, however, explains why it applied a uniform contracting model across the nation, not why it sought a legal ruling that it was compelled to do so. One possible answer is that the *Aslam* judgment carried VAT consequences which Uber needed to ensure were equally borne by its competitors. We shall return to that below.

Whatever the rationale, Uber started a claim for a declaration that under the Local Government (Miscellaneous Provisions) Act 1976 the operator was bound to contract as principal with the customers. In other words, the case it sought to make was the diametric opposite to that it had advanced before the Supreme Court in *Aslam* and the High Court in the Transport for London case. Needing a defendant, it persuaded Sefton MBC to assume the mantle, although Sefton was neutral in the High Court and quit the field after that. The case was effectively contested by D.E.L.T.A. Merseyside Limited and Veezu Holdings Ltd, both of them provincial operators.

6 Paragraph 47.

7 [2021] EWHC 3290 (Admin).

This time, Uber had some extra strings to its bow. The first was the London judgments about the 1998 Act, with Uber arguing that it was proper or convenient in a regulatory sense for the 1976 Act to be read in the same way. The second was that, seemingly picking up the gauntlet thrown down by Lord Leggatt, it had gone away to find evidence about what the contracting practice was before there was any legislation regarding PHVs, and what Parliament was trying to achieve through its legislation, exhuming *The Report of the Departmental Committee on the London Taxicab Trade*, presented to Parliament in October 1970 (the Maxwell Stamp Report). At one point, this report had baldly stated that the operator was the party with whom the passenger contracted as principal, opening up an argument for Uber that the report was the informed basis for the 1976 Act and that the intention was that the operator should contract in that way.

These arguments, together with the powder and shot argument, impressed Foster J in the High Court.[8] She thought that, given the similarities of context and statutory intention between the 1976 and 1998 Acts, the London case law should be read directly over into the interpretation of the 1976 Act.

The provincial operators appealed to the Court of Appeal, arguing that the job of construing Parliament's intention involved reading the legislation Parliament passed, with departmental reports necessarily secondary in that exercise, and that it is neither helpful nor appropriate to compare the language of the 1976 and 1998 Acts.

Turning to the language of the 1976 Act, there was precious little in it, argued D.E.L.T.A. and Veezu, to support an implied statutory requirement on the operator to contract as principal. In fact, it was the opposite: s 56(1) deems that there is a contract with the operator who accepted the booking. A deeming is a statutory fiction. Said the operators: if a contract is expressly deemed, it is not impliedly required, and if it is impliedly required, there would have been no need to expressly deem it.

Uber, on the other hand, said that the deeming provision merely clarified that when an operator sub-contracted to another operator, it remained liable under the contract. It added for good measures that s 55A, the sub-contracting provisions introduced by the Deregulation Act 2015, reinforced that position, by referring to "the contract" between the booker and the operator.

The Court of Appeal sided decisively with the provincial operators. Section 56(1) refers to both bookings and contracts: they are not the same thing. So a contract may follow the booking and may or may not be between the booker and the operator – it could instead be the passenger and the driver, for example. The express deeming provision left no room for an implication requiring the operator and the booker to contract as principals. As for the powder and shot argument, the Court of Appeal accepted that the remedy for a disappointed customer lay in complaining to the licensing authority, this after all being a system of control through licensing.

Standing back, Lewison LJ summed up the case succinctly and conclusively:

> *36. The circumstances in which a booking might be made are potentially very varied. The person who makes the booking may do so on behalf of someone else without incurring any contractual liability. Obvious examples are a restaurant arranging a vehicle for a diner who has finished their meal, a carer requesting a booking for a vulnerable person, a hospital arranging for a patient to be collected, a receptionist booking a car for a visiting client and so on. Moreover, a booking may not necessarily specify any journey; or even be made for a journey at all. A vehicle may be booked simply to be on stand-by. It is thus plain (and indeed is now common ground) that the declaration made by the judge is inappropriate. It assumes that the booking is made by "the passenger", which is not necessarily the case, and it assumes that the contract is one "to provide the journey" which is also not necessarily the case. In addition, the declaration as made stated that the operator was required to contract in order to operate "lawfully". The implication from this (although not spelled out) is that if the operator did not enter into a contract, it would be committing a criminal offence, even though there is no statutory provision that creates such an offence.*

Uber considered this ruling sufficiently damaging to its interests to take it to the ultimate destination, the Supreme Court, where it had so recently argued the opposite case, that operators were not obliged to contract with their principals. Again it lost, producing the unusual, perhaps unique, outcome that a party has lost twice in the Supreme Court in rapid succession on the same point, despite taking a diametrically opposite position on the second occasion.

Uber's twin-pronged approach in the High Court – of reliance on Maxwell Stamp and a close textual comparison with the 1998 Act - found no favour. The Court disregarded the latter entirely and actually commended the parties for eschewing legislative comparisons. Its focus was firmly on the modern approach to statutory interpretation, which is to ascertain Parliament's intention through examination of the

8 [2023] EWHC 1975 (KB).

wording it has used.

In the case of the 1976 Act, Parliament has placed regulatory obligations on operators. Uber developed a line of argument in the Supreme Court that to operate is to contract. In other words, the concept of contracting is inherent in the notion of operation.

The argument failed because in a string of cases culminating in *Milton Keynes Council v Skyline Taxis and Private Hire Limited*[9] the courts have held that "operate" has the narrow technical meaning accorded by s 80, namely making provision for the invitation or acceptance of bookings, not despatching the vehicle. The Court placed emphasis on this in its approach to the point at issue. When looking at the obligations placed on operators under the Act, these are limited to record-keeping obligations under s 56. They do not extend to obligations actually to contract with anyone.

To the contrary, the Court held that s 56(1):

> *achieves the objective of fixing the operator with the liability to fulfil the hire by a deeming provision to that effect, triggered if and when a hire contract is actually made, regardless of how, when and between whom.*

In one elegant passage, Lord Briggs, speaking for the Court, rose above the maelstrom of argument and, from an intellectual height, skewered the entire case:

> *28. The one scenario where the deeming provision in section 56(1) has no role to fulfil is where the first operator actually does accept the booking by making a contract of hire with the applicant, as principal rather than as agent. Then the first operator is liable to fulfil the hire contract at common law, and the assumed statutory purpose of making the first operator liable for the fulfilment of the hire needs no statutory backing at all. And it would make no difference to the first operator's common law liability to fulfil the hire that it had sub-contracted the hire to be performed by a second operator. Yet that is precisely the hire contract model which UBL submit is actually mandated by the 1976 Act as the only permissible way for the operator to accept the booking. Put shortly, UBL's construction would render section 56(1) completely otiose.*

Discussion

From an academic lawyer's perspective, the case was extremely simple. Does the 1976 Act require anyone to contract with anyone? Obviously not: just read the Act. In a democracy governed by the rule of law, nothing is compelled or prohibited unless the law says so. The 1976 Act does not say so. Actually, it says the opposite: contractual liability is deemed, not required.

That simple approach overleaps arguments based on what a departmental committee advised in 1970, what another Act passed 22 years later requires, and the alleged needs of a hypothetical passenger late at night, stranded in the dark and with no weapon other than access to the small claims court.

On another level, though, the case carries important socio-economic ramifications.

VAT

For operators who left their drivers to contract with their passengers (known as the agency model), no VAT arose because drivers were generally below the threshold for VAT. The outcome of the London litigation was that London operators became liable for VAT as the supplier of services. Following the first instance judgment in the D.E.L.T.A. case the concern naturally arose that the same VAT liability would attach to all provincial operators. In April 2024, the Government launched a consultation on the VAT Treatment of Private Hire Vehicles.[10] The Government alluded to the concern that all PHV journeys would be subject to VAT, and stated that zero rating such services would cost the Exchequer around £1.5 billion per year. While this is not the same as the extra VAT take arising from the first instance judgment in D.E.L.T.A. it nevertheless demonstrates that, had the Supreme Court not found as it did, there would have been an enormous sum sucked out of the provincial economy into the hands of the Exchequer arising from the obligation on PHV operators to contract as principal.

That differential may have been less, because of the reliance of Uber and Bolt on the Tour Operators' Margin Scheme (TOMS) to reduce their VAT liability. In *HMRC v Bolt Services UK Limited*[11] the Upper Tribunal upheld Bolt's claim to fall within TOMS for the purposes of VAT, meaning that Bolt only has to pay VAT on its "margin", ie, net of the driver's commission, rather than the full price of the journey. However, the Government has permission to take the matter to the Court of Appeal, and so there remains the prospect that, at least in London, operators will have to pay VAT at 20% on the price of the ride.

For Uber, however, as stated above, it made a commercial decision to operate a unitary national model, meaning that it will have to pay VAT on its rides wherever the booking is, whether inside or outside London. Perhaps more importantly,

9 [2017] EWHC 2794 (Admin).

10 https://www.gov.uk/government/consultations/consultation-on-the-vat-treatment-of-private-hire-vehicles.

11 [2025] UKU 00100 (TCC).

without a declaration that all operators are bound to do the same, it risked an outcome whereby it would have to account for VAT, with a rate potentially set at 20%, dependent on the outcome of *Bolt,* while its competitors would not have to charge or account for VAT at all. That is indeed the sorry result for Uber of its litigation strategy. It may be the reason why Uber's global share price fell by over 4% on the day after the Supreme Court judgment. It is not known whether the VAT charge, be it the full rate or reduced rate under TOMS, is something Uber will charge its customers or absorb.

Provincial businesses

Had Uber succeeded in the Supreme Court, there would have been a severe impact on provincial businesses. They would have been faced with the same dilemma now facing Uber: to charge or absorb VAT. The profit margins in the provinces would probably have precluded the latter, while the former would have reduced the size of the market. This is particularly because of inherent wealth inequality between London and the regions, and because the customer base in the regions is more largely comprised of low wage workers (such as domiciliary care workers) for whom a 20% fare hike would have been a deterrent to PHV use.

There would also have been serious logistical issues. Drivers would have become responsible for large amounts of cash handling and VAT accounting to their operators, which they do not currently have to engage in, while operators would have had to establish new systems for such accounting, which for some would have been beyond their capacity or capability. Superficially, the easier solution would be to invest in software to avoid the need for cash handling as between drivers and operators, but again this would not have been a simple step for many operators.

Being able to preserve their business model was, therefore, a cardinal concern for regional operators, whose resources are far less than Uber's, but who felt the need to defend their interests all the way to the Supreme Court.

Local authorities

Local authorities will continue to receive complaints about poor service or worse, and will continue to take action under operators' and drivers' licences where appropriate. What they will not have to do is to regulate the specific contracts between operators and passengers. On the whole, licensing is not concerned with specifics regarding contracts, and it will come as a relief to authorities that they do not have to start doing so.

Customers

Most importantly, an adverse judgment in the Supreme Court would have carried impacts for many provincial customers. The outcome of such a judgment would have been to accelerate the move towards app-based private hire services. This would have been strongly to the advantage of Uber, which runs the largest app-based private hire service in the world, and one with which a small regional operator would struggle to compete, so enabling Uber to consolidate and grow its share of the UK market.

On the customer side, not everyone has access to app-based private services, including because they do not own a smartphone, know how to subscribe to an app or have a debit card they can register to the account. This may particularly apply to older passengers, low wage workers and those working in the cash economy. The potential of having to pay an extra 20% on their fares would have been a material disincentive to many to use PHVs to access community facilities, family and friends.

Finally, nudging customers towards an app-based service nudges them away from a personal, community-based service centred on local relationships, shared social history and topographical knowledge. These are intangibles, but fundamentally important ones, which the provincial operators' success in the Supreme Court helps to preserve, which is something to celebrate.

Conclusion

This run of litigation has exposed the inextricable link between fiscal, employment and licensing considerations. The vast sums of money at stake have resulted in the Supreme Court considering the matter twice in four years. However the appeal as determined was liable to carry significant consequences. The actual outcome, however, has been of benefit to customers, operators and even licensing authorities in the regions, preserving the freedom of contract of operators, drivers and customers, while avoiding the judicial imposition of a unitary, app-based contracting model.

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