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Case No: CL-2024-000252
CL-2024-000366

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 19 October 2026

Before:

MR JUSTICE BIRT

- -

Between:

GARRY WHITE AND OTHERS	**Claimants**
and	
(1) UBER LONDON LIMITED **(2) UBER B.V.** **(3) UBER TECHNOLOGIES, INC.**	**Defendants**
And between:	
JUSTIN PETERS (AS ASSIGNEE FOR (1) KABBEE EXCHANGE LIMITED (DISSOLVED) AND (2) IRIDE LONDON LIMITED (IN LIQUIDATION))	**Claimant**
and	
(1) UBER LONDON LIMITED **(2) UBER B.V.** **(3) UBER TECHNOLOGIES, INC.**	**Defendants**

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Alain Choo Choy KC and Reanne MacKenzie (instructed by Mishcon de Reya LLP) for the **Claimants**
Sonia Tolaney KC and Michael Watkins (instructed by Herbert Smith Freehills Kramer LLP) for the **Defendants**

Hearing dates: 29-30 June 2026, 6 July 2026

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Approved Judgment

This judgment was handed down remotely at 10 am on 19 October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE BIRT

Mr Justice Birt:

Introduction

1. This judgment follows the trial of a preliminary issue in these actions, to determine an issue relating to limitation.

2. The claimants in these two actions are: first, nearly 13,300 individual black cab drivers in London ("the black cab claimants"); and second, Mr Justin Peters ("Mr Peters"), the assignee of the rights of action of two companies previously involved in the provision of private hire car services in London. They bring claims against the defendants alleging unlawful means conspiracy.

3. The defendants to both claims are three companies in the Uber group of companies, including the first defendant, Uber London Limited ("Uber London"), which is the licensed private hire operator in London. References to "Uber" in this judgment are to all the defendants collectively, unless otherwise stated.

4. In broad summary, the claimants allege that Uber conspired to cause them loss by the use of unlawful means over the period mid-2012 to 14 March 2018. The alleged unlawful means include allegations of fraudulent misrepresentations and deliberate and dishonest non-disclosure to the licensing authority, Transport for London ("TfL"), with respect to Uber's booking and operating system, and aspects of Uber's use of certain technologies. It is alleged that, but for the alleged conspiracy, Uber would not have obtained a private hire operator licence and would not then have competed with the claimants for the provision of private hire journeys in London. These allegations are denied by Uber in their entirety.

5. The claims were issued on 2 May 2024 and 24 June 2024. It is accepted that the primary six-year limitation period had expired before the issue of the claim forms. The claimants rely on section 32 of the Limitation Act 1980 to displace the primary limitation period. The claimants' case on limitation is the same for each claimant: namely, that the running of the limitation period is subject to postponement pursuant to s.32(1)(a) and/or s.32(1)(b) of the Limitation Act 1980 by reason of the alleged fraud, and none of the claimants had actually discovered the fraud, or could with reasonable diligence have done so, prior to the expiry of a reasonable period after 25 or 26 June 2018. Those were the dates of a *de novo* redetermination in the Westminster Magistrates Court of TfL's refusal to renew Uber London's Private Hire Vehicle Operator ("PHVO") licence, when Uber London's and TfL's written witness evidence, and the judgment of the Chief Magistrate, became public. The claimants say that the content of that material is crucial to their state of knowledge or constructive knowledge for the purposes of the s.32 inquiry.

6. The order made at the CMC on 22 October 2025 required the parties to select 20 sample black cab claimants, who along with Mr Peters were to provide disclosure and whose claims would be the subject of this preliminary issue trial. The question that was ordered to be determined was:

> "Did the Claimants discover, or could the Claimants with reasonable diligence have discovered, the alleged fraud and/or deliberate concealment only after 25 or 26 June 2018?"

7. For this purpose (and without prejudice to Uber's denial of liability as pleaded in their defence), it has been assumed that the claimants' pleaded case in relation to the facts which are alleged to constitute the alleged fraud and/or deliberate concealment occurred. It is common ground between the parties that if the claims are found to be time-barred, that will necessarily lead to the dismissal of the entire claim.

8. I deal with matters in this judgment under the following main headings:

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Factual background

Regulation of taxis and private hire vehicles

9. The regulation of black cabs on the one hand and private hire vehicles on the other was, throughout the relevant period, subject to two distinct regulatory regimes.

10. Black cabs (also referred to as "black taxicabs" or "Hackney carriages") are regulated under the London Hackney Carriages Act 1843 (as amended) and the Metropolitan Public Carriage Act 1869 (as amended). Black cabs are the only vehicles entitled to "ply for hire" in London, meaning that they can be hailed on the street or from a taxi rank. They are also the only vehicles entitled to use a taximeter, with fares calibrated by TfL (and they cannot charge more than the TfL-set tariff, except when pre-booked).

11. The operation of private hire vehicles ("PHVs" or "minicabs") in London is regulated by and must comply with the Private Hire Vehicles Act 1998 ("the 1998 Act") and the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000 (the "PHVO Regulations"). Section 2(1) of the 1998 Act states:

> "No person shall in London 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 (in this Act referred to as a "London PHV operator's licence")."

A London Private Hire Vehicle Operator (a "PHVO") therefore requires a licence before it can invite or accept private hire bookings, and the contemplation is that the London PHVO will accept any such bookings as the counterparty to the passenger. Section 2(2) goes on to provide that any person who makes provision for or accepts a private hire booking in contravention of s.2 is guilty of an offence and liable to a fine.

12. Section 3(2) of the 1998 Act requires an applicant for a PHVO licence to have an operating centre in London. Pursuant to s.3(3), the grant of a licence to a PHVO is subject to TfL being satisfied, amongst other things, that "*the applicant is a fit and proper person to hold a London PHV operator's licence*."

13. Section 4 sets out the obligations of PHVO licence holders, including the following:

    i) The holder of a PHVO licence "*shall not in London accept a private hire booking other than at an operating centre specified in his licence*" (sub-s.(1)). This reasserts the requirement for the licensed PHVO itself to accept a passenger booking and to do so at the PHVO's operating centre in London.

    ii) A licensed PHVO must also ensure that any vehicle used to carry out a private hire booking that the PHVO has accepted is "*a vehicle for which a London PHV licence is in force driven by a person holding a London PHV driver's licence*" (sub-s.(2)). A licensed PHVO must, therefore, have PHV licensed drivers working for it (either on an employed or self-employed basis), in a PHV licensed car. This requirement is reinforced by the provisions of ss.6 and 12, which respectively require that there must be a PHV licence in force for vehicles used as private hire vehicles in London and that drivers of such vehicles must also hold a PHV driver's licence.

    iii) In addition, a licensed PHVO must (under sub-s.(3)) undertake various steps at its London operating centre, including displaying a copy of its PHVO licence and keeping records of the private hire bookings that it has accepted there.

    A licensed PHVO who contravenes any provision of s.4 is guilty of an offence and liable to a fine.

14. The net effect of these provisions is that private hire journeys may only be provided in London by (i) a London PHVO (ss.2(1) and 3(2)), (ii) in a licensed London PHV (ss.4(2) and 6), which is (iii) driven by a licensed London PHV driver (ss.4(2) and 12). Each of those entities must hold a licence from TfL, a requirement sometimes described as the "triple lock" and is generally regarded as intended to protect passengers and ensure passenger safety.

15. The claimants also contend that, pursuant to Regulation 9 of the PHVO Regulations, applicants for PHVO licences are under an ongoing duty to disclose any information material to their entitlement to continue to hold a PHVO licence, including any facts and matters relevant to whether they are a fit and proper person under s.3(3)(a) of the 1998 Act. The precise scope of this legal duty of disclosure is disputed by Uber in this litigation, but for the purposes of the preliminary issue the claimants' case was assumed to be correct.

Trade associations

16. A certain amount of the evidence at the trial related to the existence and roles of trade associations or similar organisations in the black cab and minicab trades. The evidence referred to a number of such associations or organisations. These were as follows:

i) The Licensed Taxi Drivers' Association ("the LTDA") is an association of black cab drivers, whose members include more than 6,000 of the claimants in this action. It was involved in pre-action discussions with the claimants' solicitor, Mishcon de Reya, and their former funder, Harbour, as I set out in my judgment dated 12 June 2026 dealing with disclosure: [2026] EWHC 1610 (Comm). The LTDA is not a party to this litigation, but it agreed to co-operate with the claimants, and its documents fell within the claimants' control for disclosure purposes. A key individual within the LTDA at the material time was Mr Steve McNamara, its general secretary.

ii) The London Cab Drivers Club ("the LCDC"), which was founded in 1989, is another association of black cab drivers. It publishes a monthly newsletter called "*The Badge*" as well as communicating with its members through social media (where it has around 15,000 followers). At the material time, Mr Grant Davis was chairman of the LCDC (as he had been since 2008), and Mr Daniel O'Regan (a witness at this trial) was one of six committee members.

iii) The United Cabbies Group ("the UCG") began in 2010 as an action group that was frustrated by how the black cab trade was being treated, and subsequently evolved into a mutual society with the purpose to protect and promote London's taxi trade. It called for a demonstration by black cabs against Uber in February 2016.

iv) The Licensed Private Hire Car Association ("the LPHCA") represents licensed private hire vehicle operators.

17. Uber made it clear that it did not rely on the actions of any of these organisations for the purposes of attributing knowledge to the claimants relevant to the limitation issue. However, the actions of these groups were said by Uber to be material because (i) the claimants would reasonably have discovered facts as a result of their involvement in these associations and by reading what they published, noting that throughout the relevant period there was a concerted and well-publicised campaign against Uber, which included these associations, and (ii) the investigations carried out by the relevant associations, which were staffed by black cab drivers and private hire operators, are evidence of what reasonable investigations by the claimants would have included.

Uber's entry into the London market

18. As the claimants put it in their skeleton argument for trial, Uber is now ubiquitous, and it may be hard to recall a time when minicabs were not habitually booked through an app on a smartphone. Uber represented a new model in the minicab industry and, as it explained at trial, it was the "*first app-centred Private Hire Vehicle operator to enter the London market*".

19. In 2012, Uber applied for and, on 31 May 2012, obtained a 5-year PHVO licence from TfL to operate in London. The claimants plead that they have not seen Uber's application to TfL for a PHVO licence, nor any other information which Uber may have supplied to TfL in order to obtain the licence, but they contend in these proceedings that, in order to obtain such a licence, Uber must have represented to TfL that its business and operating model were compliant with ss.2 and/or 4 of the 1998 Act. The

claimants plead that what they describe as a false account about accepting bookings was given to TfL by Uber, and refer to that as the "2012 Representation".

20. The details of Uber's operating system are in dispute in these proceedings and will no doubt be hotly contested (if the claimants' case were to survive beyond the preliminary issue), and nothing I say in this judgment about its operating system is intended to constitute a finding such as to determine a point for anything other than for the purpose of this preliminary issue. In broad outline, passengers would install the "Rider App" on their phone and Uber drivers would install the "Driver App" on theirs. A passenger wishing to book a journey would open the Rider App and click "confirm". Uber's case is that such a booking was accepted by Uber London for the purposes of the 1998 Act, although it accepts that the driver was also required to indicate whether or not they were willing to undertake the journey. The claimants, by contrast, contend that it was the driver accepting the booking, in contravention of the statutory scheme. The driver would then pick up the passenger and complete the journey, at which point payment would be taken by the second defendant ("Uber BV") via the Rider App and a proportion of the fare would be paid to the driver.

21. From the outset of Uber's entry into the London market, questions were being asked by various other market participants as to how Uber operated in practice and how its operation could be compliant with the 1998 Act. As was common ground, under the 1998 Act an individual PHV driver, as distinct from the PHVO that holds the private hire vehicle operator's licence, is not permitted to accept the booking with the passenger (either by using an app or otherwise). As noted further below, questions being asked included whether Uber London accepted the relevant bookings in accordance with and as required by s.2(1) of the 1998 Act, or whether bookings were being accepted by drivers; and whether bookings were being accepted at the operating centre, as required by s.4 of the 1998 Act, or elsewhere; and to what extent the operation of the apps was similar to a taximeter, which only a black cab could have.

22. Uber quickly gained popularity in London and the business of drivers using the Uber App expanded. The claimants plead that they immediately began to suffer lost earnings as a result of the competition from Uber.

Initial opposition to Uber in London

23. The LPHCA appear to have become concerned about the impact Uber was having on the businesses of its members. They consulted the law firm Clifford Chance, who wrote a letter on the LPHCA's behalf to TfL dated 10 December 2013 ("the Clifford Chance letter"). The letter asserted that LPHCA members and licensed taxi drivers were "*suffering as Uber takes business from them by ignoring the regulations with which they comply*", and set out a number of breaches of the law they alleged were being committed. Among other matters raised, the Clifford Chance letter alleged that:

    i) "*Uber drivers are accepting private hire bookings without operator licences in breach of the 1998 Act*". The letter specifically referred to a breach of s.2(1) of the 1998 Act.

    ii) "*Any Uber driver who does possess an operator's licence is accepting bookings other than at an operating centre in breach of the 1998 Act.*" This allegation was advanced on the basis that acceptance of the booking took place in the

drivers' cars and, it was pointed out, constituted a breach of s.4(1) of the 1998 Act.

iii) It also explained how it was likely that Uber BV and Uber London were in breach of the 1998 Act. For example, if the drivers were accepting bookings on behalf of Uber London, then those bookings were not being accepted at an operating centre, such as to constitute a breach of s.4(1) of the 1998 Act.

iv) The Uber app was a taximeter and the drivers were plying for hire.

The Clifford Chance letter concluded by saying that the breaches of law described in the letter were clear-cut and serious, and noting that Uber's "*preferred approach appears to be to trade regardless of what local law allows, and then to seek to avoid enforcement action or to change the law as necessary.*"

24. TfL responded to Clifford Chance with the general theme that, so far as it was aware, Uber was not in breach of the law. It stated, for example, in a letter dated 8 April 2014 that TfL's "*current understanding is that [Uber]'s business model involves it (rather than its drivers) accepting bookings within the meaning of s. 2(2) of the 1998 Act.*" Correspondence between Clifford Chance and TfL continued, with Clifford Chance maintaining (for example, in a letter of 28 April 2014) that "*Uber drivers are accepting bookings.*"

25. The LPHCA were not ploughing a lone furrow in this regard. It appears they were (at least in April 2014) sharing draft letters with the LTDA and talking about coordinated action. The fact that concerns had been raised and that discussions had been taking place between TfL and the private hire and taxi trades was also reported in the trade press. There were also efforts to gain publicity for the concerns of black cab drivers. For example, the LTDA organised a protest in central London on 11 June 2014, which the Evening Standard reported in advance was expected to include up to 12,000 drivers, blocking roads around Trafalgar Square.

26. During the course of 2014, TfL and Uber engaged in correspondence concerning the nature of Uber London's booking processes. The claimants contend that the purpose of that correspondence was to enable TfL to ascertain whether Uber's business model was consistent with the 1998 Act. They contend that, in that correspondence, Uber made representations to TfL that all bookings were accepted by Uber London before being passed on to the drivers. These are referred to by the claimants as the "2014 Representations".

The Taximeter litigation

27. A case known as the "*Taximeter*" litigation was brought against Uber in the High Court by TfL in early 2015. This concerned the question whether the Uber Driver App was a form of taximeter within the vehicles made available by Uber London, and TfL sought declaratory relief in a claim against Uber London, the LTDA and the LPHCA.

28. Uber adduced evidence by way of a witness statement dated 24 April 2015 from Ms Jo Bertram, who was at the time employed by Uber London (which she identified in her statement as "ULL") as "*Regional General Manager for the UK, Ireland and the Nordics*" and had "*overall responsibility for ensuring that ULL operates in accordance*

with all applicable law and regulation" (as described in paragraphs 7-8 of that statement). Her evidence (at paragraphs 30-31) was to the effect that Uber accepted a booking before a driver had been found, saying that "*ULL accepts the booking*" and then sends the "*accepted booking on to the smartphone of the driver of the vehicle closest to the customer*" who has a limited window to "*agree to take on the booking*". The claimants refer to these as the "2015 Representations" (as representations made not only to the court in those proceedings, but also to TfL which was the claimant) and rely on them as part of their case that Uber made misrepresentations to TfL.

29. Other views of Uber's processes were held. Shortly before the hearing in the *Taximeter* litigation, Mr McNamara prepared a briefing note for Zac Goldsmith MP and others ahead of a parliamentary debate on the black cab trade that took place on 15 September 2015. His note included the statement that "*Uber's system directly connects the driver and passenger effectively making the driver the person taking the booking.*"

30. The hearing in the *Taximeter* case took place on 5 October 2015 before Ouseley J, and in a reserved judgment dated 16 October 2015, the judge held that the Uber Apps did not amount to a taximeter for the purposes of s.11 of the 1998 Act.[1]

The City of Toronto case

31. The *City of Toronto* case involved an application to the Ontario Superior Court of Justice by the City of Toronto for an injunction to enforce the City's bye-laws. The City of Toronto alleged that Uber Canada Inc, Uber BV and Raiser Operations BV were operating illegal taxicab brokerages and limousine services because they lacked the specific broker licences required by the Toronto Municipal Code Chapter 545. Neither Uber London nor Uber Technologies, Inc., the third defendant, was party to those proceedings. The judge ruled that Uber was neither a "taxicab broker" nor a "limousine service" within the meaning of the Toronto Municipal Code and thus could not be prohibited from operating without a licence.

32. Mr Ian Black was employed by Uber Canada Inc. as General Manager of Uber Canada at the relevant time. In his Affidavit in the *City of Toronto* case sworn on 21 January 2015, his evidence regarding Uber Canada Inc's booking system included the following:

> "61. A trip is the result of a request made by a passenger using the Rider App and accepted by a driver using the Driver App. None of the respondents nor any of their employees or agents accepts calls or requests from passengers for the purpose of arranging transportation, nor does any of them dispatch drivers to passengers. As discussed above, requests for rides are initiated by the passenger. The Rider App sends the request to software servers in northern California. The request is then sent from those servers to the driver who is nearest to the pickup location and the driver has sole and complete discretion over whether to receive, accept or reject requests.

[1] *Transport for London v Uber London Ltd & others* [2015] EWHC 2918 (Admin) 1449

> 62. Contrary to the assertion made by Ms. Cook in her affidavit, the respondents do not perform the services of a traditional taxi broker or limousine service company. Requesting a taxi through a traditional taxi broker typically involves the passenger calling or making a ride request to the taxi broker. A representative of the taxi broker will receive and respond to requests for service from passengers. Either that representative or another representative of the taxi broker will then communicate with taxicabs affiliated with the broker to find an available driver and will dispatch a taxicab to the requested pickup location. A similar process occurs with respect to limousine service companies that receive calls for limousines and dispatch limousines to passengers.
>
> 63. The respondents do not perform those functions. Contrary to Ms. Cook's assertion, none of the respondents (nor any other Uber company) "responds to requests for service from passengers" nor do they "dispatch" taxicabs or limousines. The only persons who respond to requests for service are the drivers themselves who, as noted above, are not employees or agents of any Uber company. The Uber App simply provides a telecommunications platform that facilitates those responses."

33. It should be noted that in paragraph 63 of his Affidavit, set out above, Mr Black extended his denial that Uber responded to passenger requests or dispatched cars beyond the respondents to the *City of Toronto* case and included in it "*any other Uber company*". His evidence was, on the face of it, inconsistent with how it appears that TfL understood how Uber operated in London, and inconsistent with the process described by Ms Bertram in the *Taximeter* litigation.

The Aslam case

34. In the *Aslam* case, the claimants were Uber drivers who claimed that they were "workers" within the meaning of s.230(3)(b) of the Employment Rights Act 1996 and therefore entitled to certain benefits such as the national minimum wage and paid holidays. The claim was brought in the Central London Employment Tribunal against Uber BV, Uber London and Uber Britannia Limited (which is the relevant Uber entity for Uber operations in the UK outside London). Ms Bertram, who had previously given a witness statement in the *Taximeter* proceedings, also gave a witness statement dated 7 July 2016 in the *Aslam* proceedings.

35. Her statement in the *Aslam* case included the following passages:

> "45. ULL is responsible for accepting the booking made by a Passenger, as holder of the operator licence. However, at the point that a request is made by a Passenger, there is no obligation to provide a vehicle. As I explain below, the booking is accepted by ULL as the relevant private hire vehicle operator and allocated to the Driver. A booking is not accepted by ULL until a Driver has confirmed that they are available and willing to take it. Confirmation and acceptance then takes place by ULL almost

> simultaneously. A Driver is entirely free to make themselves available to provide the transportation services or not, which is described in further detail below. As such, the Operator Licence has no impact upon the freedom a Driver has when using the platform."
>
> "53. Once a request is made, and ULL has confirmed a Driver is available to take the booking, ULL accepts the booking on behalf of that Driver and the Uber system then displays, via the Passenger App the name, image, registration number and rating of the Driver. …"
>
> "60. ULL will receive a booking request from a Passenger. ULL will then make this request visible on the Driver's smartphone, together with the first name and rating of the Passenger. It is then the Driver's decision whether or not to confirm their availability and willingness to take the trip. If they do choose to take the trip, they will touch to confirm to ULL that they are available and willing to take the trip. Having done so, ULL will accept and confirm the booking to the Passenger on behalf of the Driver, and almost simultaneously and instantaneously allocate the trip to the Driver."
>
> (underlining added)

36. The description of the process given by Ms Bertram in this statement appeared, at least on its face, inconsistent with the one she had given in the *Taximeter* litigation. The claimants' pleaded case in their Amended Particulars of Claim in these proceedings (at paragraph 31) is that in both the *Aslam* case and the *City of Toronto* case:

> "Uber had contended that it was the driver who decided whether to accept a booking, and that the driver (not any Uber entity) took responsibility for providing the journey."

37. It appears that the LTDA became aware of both Mr Black's Affidavit in the *City of Toronto* case and Ms Bertram's Witness Statement in the *Aslam* case. Mr McNamara wrote on behalf of the LTDA to TfL in a letter dated 22 July 2016, stating that evidence given in both cases supported the LTDA's view that "*Uber drivers take the booking in the car contrary to the [1998 Act]*" and that "*the drivers accept bookings without an operators [sic] licence and otherwise than at a licensed operations centre, meaning that all Uber vehicles are plying for hire without hackney carriage licences in breach of the Metropolitan Public Carriage Act of 1869.*" He asked TfL to carry out an immediate review of this information and "*compare it to the information given to TfL by Uber in their initial application for a PH operators [sic] licence.*" Mr McNamara updated the LTDA members on 27 July 2016, referring to the *City of Toronto* case, saying that it could "*possibly affect Ubers suitability to continue to be licensed in London*", that the LTDA had written to TfL, and had "*engaged specialist counsel to review the evidence.*"

38. The LTDA communicated again with its members on 12 August 2016 stating: "*The LTDA lawyers will continue with their review of the Uber court case in Canada, and*

the recent employment tribunal involving Uber drivers in London; with a view to challenging Uber's right to operate in the Capital", and referring to the LTDA's efforts to "*launch legal proceedings against Uber drivers, for illegally plying for hire*".

39. There were also numerous communications between black cab drivers (e.g. on social media) discussing this, and emails from the LTDA discussing the implications, which included tweets (including one from Mr O'Regan) pointing out that Uber had accepted in the *City of Toronto* case that bookings did not go through an operator but directly to the driver. For example, Mr Davis of the LCDC sent an email dated 19 July 2016 to Mr White (a black cab claimant in these proceedings), copied to numerous others (including individuals at TfL, the LTDA, and John McDonnell MP) saying: "*I firmly believe that Uber DO NOT take the bookings as required by the [1998 Act] and the fish they threw TFL about the booking done in "the clouds" was just accepted by TFL AS A MATTER OF FACT.*" Mr White himself emailed TfL on 30 November 2016 stating:

> "You know full well that I have spent over two years telling TfL Officers that they are wrong. The evidence from the various Courts & Tribunals also shows that Uber London is just a front and the booking is recorded after the Driver accepts the trip, in the same way that Hailo works.
>
> Uber has played TfL like a cheap fiddle!"

40. Another driver called Chris Johnson (who I was told ultimately decided to stop driving cabs as a result of his views about Uber) produced a number of presentations analysing aspects of Uber's processes, explaining why he believed them to be unlawful in a number of respects, distributing his conclusions widely (including to TfL, the press, various politicians, and others). He clearly had strong views, saying in one email about Uber, "*basically they are a fraud,*" and in another referring to the "*Uber booking contract deception*" (both emails in August 2016). Some of his material was republished in *The Badge* in September 2016.

41. Another line of investigation the LCDC undertook was to look into what planning permission and/or certificates of lawful use had been applied for by Uber for their physical premises in London. Mr O'Regan described this in his oral evidence, saying that "*…and in their planning permission they said that they were just a normal company what works 9 to 5*" at the same time as they were running a 24-hour booking operation: "*So just that alone, we were saying, "This is a sham."*" In an email dated 7 September 2016 to the Southwark News, having set out the results of their inquiries, the LCDC stated that it proved that Uber "*are not the Operator and that the jobs go straight to the driver, therefore every UBER driver has been acting illegally.*"

42. It was not just the LTDA and the LCDC who were actively looking at this. The UCG was also aware of Mr Black's Affidavit in the *City of Toronto* case and drew similar conclusions. In an email dated 21 July 2016, Mr Brian Garvey of the UCG committee had emailed various individuals (including Mr Davis and Mr McNamara of the LTDA) stating that the "admissions" in the Toronto case meant that we "*can have TfL over a barrel as Uber admit that the driver via his device accepts the job dispatched by the software and that they as an operator have no hand in it. so it is a relationship solely*

between the customer and the driver, which is illegal. Drivers are not licensed to receive direct bookings not even operator drivers."

Uber correspondence in August 2016 and meeting with TfL in November 2016

43. Following the *Aslam* case and the *City of Toronto* case, during the course of which as I have noted Uber had appeared to describe the booking process differently from the way in which it had presented its system to TfL, TfL sought further information from Uber about the booking process.

44. In correspondence to TfL in August 2016, Uber contended that this "*latest attempt to challenge ULL's operations is misconceived both factually and legally*". At a meeting with TfL in November 2016 the claimants allege that Uber (again) represented to TfL that Uber London accepted the booking, not the driver. These are referred to by the claimants as the "2016 Representations".

Greyball

45. Greyball was the name of software that Uber had used in efforts to evade regulatory authorities in a number of countries. The claimants allege the following about Greyball at paragraph 41.5 of their Amended Particulars of Claim:

> "(1) From about 2015 or earlier, the Defendants used or had available to them "Greyball" software, which is or can be used to avoid or impede checks or other enforcement measures by public authorities, including the police.
>
> (2) "Greyball" used geolocation data, credit card information, social media accounts and other data points to identify individuals suspected of working for public authorities or law enforcement. Such persons could then be shown a "dummy" version of the Uber Rider App, with fake cars that would not respond to ride requests."

46. News of Uber's use of Greyball broke in March 2017, in particular in a lengthy article published on 3 March 2017 in *The New York Times*, entitled "*How Uber Deceives the Authorities Worldwide.*" It explained how Greyball allowed Uber to circumvent officials who were trying to clamp down on its ride-hailing service, and said Uber had used it "*to evade the authorities in cities like Boston, Paris and Las Vegas, and in countries like Australia, China and South Korea.*" The allegations were then widely reported in the UK press e.g. the BBC ("*Uber uses 'secret program' Greyball to hide from regulators*"), the *Financial Times* ("*Uber used fake app to confuse regulators and rivals*"), *The Guardian* ("*Greyball: how Uber used secret software to dodge the law*"), and others. There was also widespread discussion of the issue on social media. The LCDC publicised the allegations in the May 2017 edition of *The Badge* and the LTDA relied on them in the 24 March 2017 letter from their solicitors, Michael Demidecki & Co, to TfL that I refer to in further detail below.

Uber's application to renew its licence

47. Uber applied to TfL to renew its PHVO licence in February 2017. As part of its application, the claimants allege that Uber represented to TfL that Uber London, and not the driver, accepted the booking, as well as explaining that its previous descriptions of the operating system had been "*generic*" and "*not focused upon the timing of acceptance in the way that discussion have been in previous months*", and apologising for any confusion that might have been caused by previous descriptions of its operating system. The claimants refer to these as the "2017 Representations".

Michael Demidecki & Co letter dated 23 March 2017

48. The solicitors' firm Michael Demidecki & Co had acted for the LTDA in the *Taximeter* litigation. On 23 March 2017, they wrote a letter to TfL on the LTDA's behalf making representations in opposition to the application they anticipated was being made by Uber to renew its licence.[2] The allegations made in that letter included the following:

    i) "*The Uber model requires that Uber drivers unlawfully ply for hire*" (paragraph 3(1)). There were a number of detailed paragraphs later in the letter making submissions supporting that proposition.

    ii) "*Insofar as Uber purports to comply with PHV legislation, its operation is a sham. It masquerades as an operator under the cloak of an operator's licence; which it obtained for that purpose, and which it uses as a shield for the unlicensed and unlawful activities of its drivers*" (paragraph 3(2)).

    iii) It explained under a sub-heading that the Uber platform "*requires drivers to act in contravention of the [1998 Act]*". It drew attention to the inconsistent statements made by Uber (including contrasting what had been said by Ms Bertram in the *Taximeter* case with what she had said in the *Aslam* case and what Uber had said in the *City of Toronto* case) and analysed how the platform worked. It noted that "*The driver, and no-one else, accepts (as principal) the booking, having (as principal) made provision for the invitation and acceptance of the same*" (paragraph 26). It concluded that, by making use of the Driver App in London, the drivers did so "*as operators in breach of s.2(1) of the 1998 Act*" and that, by accepting bookings in their vehicles, drivers were in "*breach of s.4(1) of the 1998 Act, which prohibits the acceptance of a private hire booking other than at an operating centre*" (paragraphs 39 and 40).

    iv) Since 2014, "*Uber has … sought to mislead regulators and the courts as to the reality of how the [Uber] model operates*" (paragraph 58).

    v) "*It has recently been disclosed that Uber actively engages in obstructing regulators from making an accurate appraisal of its operation - either the fundamentals of it (the "nuts and bolts"), or its lawfulness. It would appear that this obstruction is not confined to the USA (where the disclosure originated), but is a modus operandi across the entire Uber estate*" (paragraph 8). This was

[2] It also appears that the LTDA prepared a press release summarising the position set out in the letter and containing a link to it (though only a draft of the press release appeared in the disclosure that has been given to date in these proceedings).

a reference to the "Greyball" tool. The letter later went into this further (at paragraph 67):

> "…the LTDA is shocked, but perhaps not entirely surprised, by the recent disclosures of Uber's deployment of the VTOS programme and "Greyball" tool, software designed to frustrate regulators using the Customer App to investigate regulatory compliances (or breaches) by Uber. "Greyballing" included carrying out investigations into the regulatory officers and staff". Uber accepted that it operated these programmes and practices. It took six days of international condemnation before it resolved to terminate its activities."

vi) It then concluded (at paragraph 70):

> "Uber has demonstrated on numerous occasions that it is willing to operate a corporate culture where the one and only goal is to implement the model regardless of the regulatory landscape. This not just the matter of employees submitting to pressures to give "grimly loyal" evidence, but extends to the sanctioning of the use of cloaking software, and investigations into the personal details of the employees and even of regulators. That Uber appear not to have thought it wrong to do so, should be a matter of the greatest concern to TfL."

49. There was some follow up correspondence between TfL and Michael Demidecki & Co, including a TfL letter of 2 June 2017, where TfL said that it considered, "*on the information available to it at the present time, that ULL is a fit and proper person to hold a licence and that its operations comply with the statutory framework in this area*" and noting that TfL was pursuing further enquiries which it expected to complete within four months.

50. Discussion between black cab drivers continued, including by email and over social media. For example, on 25 April 2017, members of the LCDC (including Mr O'Regan and Chris Johnson) were part of an email chain that started with an email pointing out the inconsistency in Ms Bertram's statements in each of the *Taximeter* litigation and the *Aslam* case and asking the question: "*Has she perjured herself?*".

51. Uber was discussed at the Unite National Taxi Conference on 6 June 2017, where the conference was told by guest speakers (a solicitor specialising in taxi and private hire law and someone from the national association of licensing and enforcement officers) that, if it is the driver accepting the booking, "*the offence wouldn't be illegal plying for hire but rather, accepting a booking without an operators licence*" [sic].

The Decision Letter

52. On 22 September 2017, TfL issued a decision letter ("the DL") in which it declined to renew Uber London's licence. It was not satisfied that Uber London was a fit and proper person to hold a PHVO licence.

53. The DL itself was not immediately made public. On 22 September 2017, TfL issued a 2-page press release in which it announced that it considered Uber London "*not a fit and proper person to hold a private hire operator licence*". The press release referred to a number of matters (including, for example, Uber's approach to reporting serious criminal offences, and its approach to explaining the use of Greyball), but did not include any allegation of Uber misleading TfL in relation to how its model worked. The press release, and the fact that Uber's licence was not being renewed, was widely publicised not only in the taxi and private hire trade press, but also more widely.[3]

54. Uber responded with a public statement from Mr Dara Khosrowshahi (its global chief executive) stating that "*we've got things wrong along the way. On behalf of everyone at Uber globally, I apologise for the mistakes we've made.*"

55. Although the DL itself was not made public immediately, once the LTDA had obtained a copy of it (after it had intervened in the licensing appeal, as described below) it published a copy of the DL on its website on 20 December 2017 (as well as sending a copy to the BBC). It was accepted that the DL became publicly accessible at that point in time.

56. Among other things, the DL set out that:

    i) TfL considered that Uber London had "*misled TfL in correspondence in 2014 as to the process by which bookings are accepted through the Uber app*" and that Uber London's answers to their questions had been "*materially false and misleading.*" In relation to this, the DL set out a detailed account of TfL's correspondence with Uber, Ms Bertram's evidence in the *Taximeter* litigation, her evidence in the *Aslam* case, Mr Black's Affidavit in the *City of Toronto* case, and an explanation of the investigation which TfL had carried out in the light of that evidence in 2016 and 2017, including with technical assistance from Deloitte. TfL's conclusion relating to this at paragraph 21 of the DL was:

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

    The DL also later set out that either "*ULL knew that the information provided was misleading, or it did not understand its own systems sufficiently (despite assertions to the contrary)*."

    ii) TfL considered that ULL had not been "*open and transparent with TfL about Greyball.*" TfL concluded that Greyball was relevant to Uber London's fitness

[3] Mr Peters gave an interview about it on Sky News, as referred to later in this judgment.

and propriety because (among other things) Uber had failed to correspond with TfL in an open, frank and transparent manner about it, and senior staff had been aware that Greyball technology was being considered as a means of evading regulator enforcement in jurisdictions for which they had direct responsibility.

iii) TfL also concluded that there had been a lack of corporate responsibility within Uber in relation to other matters that related to public safety.

57. Following publication of the DL, there was wide discussion on social media between black cab drivers, including Grant Davis posting in the Save Our Black Taxis Facebook group that: "*We have been right all along and UBER have mislead [sic] Tfl all along.*" Others joined in saying they needed a "*crowd funded class action*", to which Mr Davis responded that he had already contacted a "*very top of the tree lawyer*" specialising in class actions. *The Sunday Times* reported the DL in an article on 24 December 2017 entitled "*Uber 'lied' in court case that allowed it to operate in London*". The black cab trade press also covered the DL in detail.

58. At the preliminary issue trial, the claimants accepted that the DL contained relevant information as to certain aspects of their pleaded case, in particular:

i) It identified what has been pleaded as "the 2014-2017 Representations" said to have been made by Uber London to TfL and TfL's view of their falsity (as set out at paragraph (a) of the summary and paragraphs 2 to 25 of the detailed reasons in the DL).

ii) It addressed Uber London's failure to disclose material information as to the existence and use within the Uber group of the Greyball technology, as set out at paragraph (b) of the summary and paragraphs 26 to 52 of the detailed reasons of the DL.

iii) It relied on the outcome of an IT systems architect review (conducted by Deloitte and described in a report dated 7 August 2017) of how Uber's technology and booking process worked (at DL paragraphs 19-21), which led TfL to conclude that "*it is clear that ULL's system automatically 'accepts' the booking only after a driver has 'accepted' the trip*", so that "*ULL's prior assertions, that the dispatch servers arranged for drivers to discharge a booking already accepted by ULL, and that receipt and acceptance by ULL of the passenger's booking takes place at the same time as the relevant driver is notified of the booking, were false*" (at DL paragraph 21).

59. The claimants accepted in their skeleton argument for this trial that the DL put the claimants on notice of a need to investigate; that it was at least a "trigger" for further investigation. The claimants maintained however there were a number of important gaps in, and qualifications to, the DL with the result that they could not have pleaded their case on the base of it alone. I will return to the DL, and how much the claimants could have relied on it, later in this judgment.

Small claims brought by individual black cab drivers

60. On 29 September 2017, some seven days after the TfL Decision had been announced (and before the DL had become public), three individual black cab claimants, as

litigants in person, commenced small claims against Uber London seeking damages for loss of earnings. The claims were based on Uber's public apology in the light of the TfL decision. The essential allegation was that Uber London had admitted to having acted unlawfully and that this had caused the claimants to lose business. The claims were ultimately settled on 30 January 2018. The small claims were discussed on social media between a number of black cab drivers, and it is apparent that there was a keen appetite among drivers for pursuing claims against Uber in an organised fashion.

The licensing appeal

61. On 13 October 2017, Uber London filed an appeal (to the Westminster Magistrates' Court) against TfL's decision not to renew its licence ("the licensing appeal"). This was also widely reported. Uber London was permitted to operate pending the determination of its appeal. The licensing appeal proceeded as a *de novo* determination of Uber London's licence application by way of a full rehearing.

62. The LTDA applied to intervene in those proceedings, and that application was granted by the Chief Magistrate at a case management hearing on 19 December 2017. Gerald Gouriet KC, who was representing the LTDA, published a short (6 paragraph) article on his chambers' website in which, among other things, he summarised some of the content of the DL:

> "TfL sets out in detail how Uber had misled it, and also misled the High Court, as to the order in which bookings are accepted through the Uber APP. TfL say that Uber's answers to questions were "materially false and misleading"."

Ripley

63. Allegations became public in January 2018 that Uber had been using what is referred to as "*kill switch technology*", and which was referred to internally at Uber as "*Ripley*". The claimants plead in their Amended Particulars of Claim at paragraph 41.5(6) that this technology:

> "…can be used to prevent police officers and regulators from accessing sensitive data during raids on its offices. … When an Uber entity's office is raided, it is understood that executives can instruct IT staff to cut off access to the main data systems – preventing the authorities from gathering evidence. The "kill switch" is reported to have been used in at least 12 raids in France, the Netherlands, Belgium, India, Hungary and Romania."

64. This was not referred to in the DL because it was not known about (outside Uber) at the time of the DL. However, there was coverage of it in the press starting on 11 January 2018 by the *Financial Times* ("*Uber used software to lock computers during raids*"), *The Guardian* ("*Uber developed secret system to lock down staff computers in a police raid*") and Sky News ("*Uber used remote computer system to shield data from police* raids") in January 2018. There was also an article about it in the 6 February 2018 edition of the LTDA's *Taxi Magazine*. Some individual drivers picked up on it on social media.

The evidence in the licensing appeal

65. In support of the licensing appeal, Uber London filed a witness statement from Mr Thomas Elvidge dated 26 February 2018 ("Elvidge 1"). Mr Elvidge was an executive director of Uber London, as well as the General Manager for Uber in the UK and Ireland.

66. In Elvidge 1, Uber accepted that the information it had provided to TfL about its booking system had not always been correct or sufficient and accepted that Uber London had given TfL insufficient evidence at the time of its renewal decision to conclude that it was a fit and proper person. It also accepted that the information previously provided about Uber London accepting bookings (rather than the drivers accepting them) had been "false".

67. In response, TfL filed a witness statement in response to Elvidge 1 from Helen Chapman (TfL's then Interim Director of Licensing, Regulation and Charging) dated 29 March 2018 ("Chapman 1"). The content of Ms Chapman's statement was relied on little by the claimants in their skeleton for the trial, but by the time of the closing submissions it had become an important plank in their argument that they did not have sufficient information to be able to plead their case until after 25-26 June 2018. I deal with the content of the statement in that context below.

68. These witness statements did not become publicly available until they were admitted in open court. Both Mr Elvidge and Ms Chapman were cross-examined on the contents of their statements at the hearing on 25-26 June 2018.

69. The statements were provided to the LTDA on a "*confidential basis*" on 16 April 2018 and, as I explain further below, were then passed by the LTDA to Mishcon de Reya on around 17 April 2018. However, there was no evidence that either Elvidge 1 or Chapman 1 was sent to any of the claimants before the hearing on 25-26 June 2018.

70. The claimants emphasised that, even if Elvidge 1 and/or Chapman 1 had come into the possession of one or more of the claimants prior to 25-26 June 2018, they could not have been used for any purpose other than the purposes of the licensing appeal, and certainly could not have been used for the collateral purpose of enabling the claimants and their legal advisors to formulate the unlawful means conspiracy claim pleaded in the APOC. The defendants did not take issue with that.

The Harbour investigation

71. In around December 2017, the litigation funder Harbour had approached Mishcon de Reya for the purposes of exploring a claim against Uber. The documents that came into existence during the course of Harbour's retainer of Mishcon de Reya were the subject of a disclosure application shortly before this trial (and were discussed in my judgment dated 12 June 2026 at [2026] EWHC 1610 (Comm)). During the course of their investigation of a claim against Uber, Mishcon de Reya spoke to Mr McNamara at the LTDA and also reached out to Mr Wright at the LPHCA. They also (contrary to the assertion made on behalf of the claimants at the disclosure hearing) had some direct contact with individual black cab drivers who subsequently became claimants.

72. Mr McNamara informed LTDA members about the intended claim on 15 February 2018, and subsequently in April asked members to provide financial information for the purposes of quantifying the intended claim. Over one hundred black cab drivers responded to this request by providing financial information, which was then passed on to Mishcon de Reya. The partner in charge of the case at Mishcon de Reya, Richard Leedham, emailed Mr McNamara on 21 June 2018 stating that "*our detailed proposal has gone in to the funder…*".

73. It appears that, notwithstanding the claimants' emphasis in their submissions before me that the evidence served in the licensing appeal had been provided to the LTDA on a confidential basis and was subject to an implied undertaking against collateral use, Mr McNamara nonetheless provided the evidence to Mr Leedham at Mishcon de Reya before it was made public. In their closing submissions, the claimants confirmed that Mishcon de Reya had received hard copies of Elvidge 1 and Chapman 1 from Mr McNamara on or about 17 April 2018. Mr McNamara provided other statements from the proceedings to Mr Leedham by email dated 25 April 2018, the only text in the email being "*Not from me!"*.

74. However, there was nothing to suggest that, having been sent the documents in such a way by Mr McNamara, Mishcon de Reya used them at all. Mr Choo Choy KC (who appeared for the claimants) in his oral closing submissions at the trial[4] made it clear that I should proceed on the basis that Mishcon de Reya had not used them at this stage (before they had become public) e.g. to analyse a potential claim which might be funded or to formulate the proposal to the funders.

Uber London's change to its operating system

75. On 14 March 2018, Uber London announced that it had changed its operating system so as to make it clearer who accepted the bookings, although in the licensing appeal Uber London explained that it did not believe that these changes were required in order to comply with the 1998 Act. In any event, TfL indicated that it was satisfied with the changes. This represents the end date of the claimants' pleaded conspiracy claim.

The licensing appeal judgment

76. The Chief Magistrate handed down her judgment determining the licensing appeal on 26 June 2018. By the time of the hearing of the licensing appeal, as recorded in the judgment, Uber London "*had changed a number of its working practices and its governance and TfL took a neutral stance as to whether the licence should be granted by the court.*" Uber was now only asking for a probationary licence, for a 15-month period.

77. In her judgment, the Chief Magistrate recorded that Mr Elvidge accepted that what had been said by Uber London to TfL in relation to the acceptance of bookings was false and that Uber London had now accepted that it misled TfL and the High Court (in the *Taximeter* litigation). Among other matters, her judgment stated:

[4] Clarifying a point that was potentially otherwise ambiguous in the claimants' written closing submissions.

> "14. It is an important consideration for this court, that ULL accepts now that the Decision not to renew was fully justified, namely that in September 2017 it was not a fit and proper person within the meaning of the Act to hold the licence.
>
> 15. Nine months have passed, the changes set out in the skeleton arguments have taken place. The question for this court is whether ULL can be trusted when it says it has changed and whether it will maintain the changes when these proceedings drop away."

78. In relation to Mr Elvidge's acceptance that what had previously been said by Uber was false, she noted that TfL had asked her to consider making a finding that it had been deliberately false, noting also that Uber said it was "*a failure to understand its own processes and that I should not make a finding which would not be relevant to the issues that are now before me.*" She declined to make any finding of dishonesty, and concluded it was sufficient to say that the "*correspondence gave a materially false picture of the processes then used.*"

79. At paragraph 24 she referred to the matters that had been raised in the DL and said:

> "So far as the Decision letter is concerned, there is now an acceptance that ULL misled TfL and the High Court. There is an apology from ULL. In terms of the second issue, the use of Greyball technology, at least one of the relevant employees who knew about this technology has left the company although I note others remain and perhaps of more significance ULL has created a Compliance Protocol … . The leadership of the company has been changed to a limited extent."

80. At paragraph 27 she referred to Ripley:

> "A second issue that has arisen since the Decision is Ripley. Ripley is a software tool which some Uber companies had used to remotely lock computers when regulators were visiting. Mr Elvidge explained that Ripley was not used in that way in the United Kingdom but he understood Ms Chapman's concerns."

81. The Chief Magistrate then went on to set out the changes made by Uber London since the DL, including the proposed list of conditions which would be part of the licence if one were granted. She also identified the governance changes, and a new compliance protocol, as well as an argument made by Mr Gouriet for the LTDA about "cross-border hiring" which she found was not relevant to what she had to decide. Having considered matters, she explained that, whilst Uber London had not been a fit and proper person at the time of the DL, it was one by the time of the hearing, and she granted the licence (for 15 months).

Subsequent events

82. The claimants accepted that, following publication of the licensing appeal judgment on 26 June 2018, they knew or could reasonably have discovered sufficient information to

bring the claims made in these proceedings.

83. Mishcon de Reya had signed up at least some individual black cab claimants to its proposed group action by October 2018, with Harbour providing funding. A letter before action was sent to Uber by Mishcon de Reya on 12 July 2019, to which Uber responded denying the claim. It appears that Harbour, in November 2019, declined to provide further funding and its participation ceased. The claimants did not write again to Uber about the potential claim for four and a half years.

84. For completeness, I also note that, in their Amended Particulars of Claim, the claimants rely upon what was said in an article in *The Guardian* on 10 July 2022, concerning a leak of around 124,000 documents from the Uber group which the claimants contend evidenced the group's corporate culture and policy of frequently disregarding legal requirements relating to the operation of its services and avoiding or obstructing enforcement by regulatory authorities. However, Mr Choo Choy confirmed in his oral opening submission that he did not contend that that was an essential part of the case without which the claim could not have been advanced. It was, as he put it, one of the "*strengthening bits*" but not at the core of it or one of the "*central pillars*" of the claim.

Applicable legal principles

85. The material parts of s.32 of the Limitation Act 1980 provide as follows:

> "**32. Postponement of limitation period in case of fraud, concealment or mistake**
>
> (1) Subject to subsections (3), (4A) and (4B) below, where in the case of any action for which a period of limitation is prescribed by this Act, either—
>
> (a) the action is based upon the fraud of the defendant; or
>
> (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or
>
> (c) the action is for relief from the consequences of a mistake;
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.
>
> References in this subsection to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent.
>
> (2) For the purposes of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty."

86. Thus, under s.32(1)(a) (action based upon the defendant's fraud) and s.32(1)(b) (deliberate concealment by the defendant) time will not begin to run unless the claimant has either (i) discovered (actual knowledge), or (ii) exercising reasonable diligence could have discovered (constructive knowledge), the alleged fraud or deliberate concealment.

87. As Males LJ explained in *OT Computers Ltd v Infineon Technologies AG* [2021] EWCA Civ 501; [2021] QB 1183 at paragraphs 19-22, citing from the decision of the Supreme Court in *Test Claimants in the FII Group Litigation v Revenue and Customs Cmrs* [2020] 3 WLR 1369 (the "*FII case*"), the section as a whole is not to be given either a broad or a narrow interpretation, but rather is to be interpreted in a way that gives effect to its statutory purpose. As Males LJ went on to explain at paragraphs 24-25, the purpose of the postponement effected by s.32(1) is to ensure as a matter of fairness that a claimant is not disadvantaged, so far as limitation is concerned, by reason of being unaware of the circumstances giving rise to their cause of action as a result of fraud, concealment or mistake. It would be unfair for time to run against a claimant before they could reasonably be aware of the circumstances giving rise to their right of action. The section is therefore to be construed in light of that purpose and not to defeat it.

The requisite level of knowledge

88. Two tests have been referred to in the authorities as to what is to have been discovered in order to fall within s.32 – sometimes referred to as the "statement of claim test" and the "worthwhile claim test". These were described in *Gemalto Holding BV v Infineon Technologies AG* [2022] EWCA Civ 782; [2023] Ch 169 by Sir Geoffrey Vos MR at paragraphs 2-3 as follows:

    i) The "statement of claim test": "*whether the claimant had, or could with reasonable diligence have, obtained such knowledge as would allow it and its professional advisors properly to plead a claim that would not be liable to be struck out as unarguable or lacking a sufficient evidential basis*".

    ii) The "worthwhile claim test": "*time should begin to run from the point when the claimant knows, or could with reasonable diligence know, that it has a worthwhile claim. The claimant must know about the mistake (or in this case the concealment) with sufficient confidence to justify embarking on the preliminaries to the issue of proceedings, such as submitting a claim to the proposed defendant, taking advice and collecting evidence.*"

89. In *Gemalto*, it was recognised that the Supreme Court in the *FII case* had determined that the worthwhile claim test was applicable in relation to s.32(1)(c) (the consequences of a mistake), and decided that the same test applied in relation to s.32(1)(b) (deliberate concealment). However, as noted by Sir Geoffrey Vos MR at paragraph 45, there is unlikely in most cases to be a real difference between the application of the two tests. As he observed at paragraph 47, "*if the putative claim would be struck out as not disclosing a cause of action, it would be right to say that the claimant had not discovered that it had a worthwhile claim.*" The question of the applicable test in relation to s.32(1)(a) (fraud) was not the question that directly concerned the court in *Gemalto*, although it was noted at paragraph 44 that the reasoning adopted by Lords Reed and Hodge in the *FII case* applies equally to fraud, mistake and deliberate

concealment, but that if there was a difference for fraud cases, "*it would have to be found ... in the stricter rules of pleadings in fraud.*" This last point reflected what had been said by Lords Reed and Hodge in the *FII case* at paragraph 191, that the formulation of the test in fraud cases "*reflects the special standards applicable to the pleading of fraud.*"

90. The point was considered by Nugee LJ in *Seedo v El Gamal* [2023] EWCA Civ 330; [2023] Ch 473 where, having reviewed a number of the authorities (including the *FII case* and *Gemalto*) he said, at paragraph 48:

> "It can therefore be taken to be established that in a fraud case, time starts to run when the claimant has discovered enough to plead their case."

And at paragraph 49:

> "A claimant brings a claim alleging a fraud. If you want to know if that claim is barred the relevant inquiry is when the claimant knew enough to plead that claim."

91. This was taken by Dame Clare Moulder DBE in *Super Fast Trading Limited v The Governor and Company of the Bank of Ireland* [2025] EWHC 871 (Comm) at paragraph 95 as a statement to the effect that the Statement of Claim test applies in fraud cases and, having noted comments in two first instance cases relied upon by the defendant which were said to suggest otherwise, she proceeded on the basis that the authorities that were binding on her identified the Statement of Claim test as the appropriate test for a claim in fraud (see paragraph 98).

92. As a result of the above, Uber accepted before me that the Statement of Claim Test applies in relation to s.32(1)(a), while noting that the worthwhile claim test applied in relation to s.32(1)(b). There was a dispute on the pleadings as to whether s.32(1)(a) applied here because the claim is pleaded in unlawful means conspiracy rather than in deceit, however Uber made it clear in its skeleton argument that (whilst noting it was unlikely to make any practical difference) it was content to proceed on the basis that both tests were in issue and both had to be applied. In practice, that means that the claimants have to prove that, at the relevant time, they had not discovered, and could not reasonably have discovered, facts sufficient to plead a case that would not be liable to be struck out.

93. The start of the limitation period is not postponed by any need to evaluate the prospects of success of the claim or to carry out some similar further analysis. As explained in *Gemalto* at paragraph 47:

> "The claimant cannot postpone the start of the limitation period until it has had the time to investigate the details of the claim and the possible defences and to evaluate its prospects … . That is what the six-year limitation period is for. The question of whether a claim is worthwhile is not a complex balance of the chance of success… . The limitation period is not postponed until the claimant can show that it is more likely than not to succeed."

94. In *Allianz Global Investors GmbH v RSA Insurance Group Limited* [2021] EWHC 2950 (Ch), Miles J at paragraph 33 identified that what is necessary under s.32 is "*knowledge which enables the claimant to make (or believe he can make) an allegation. He does not have to have certainty.*" He also noted at paragraph 34 that:

> "What must be discovered is the fraud actually alleged in the claim; it is not sufficient that the claimant could with reasonable diligence have discovered that there was some other fraud or wrongdoing: see *Boyse v Natwest Markets* [2021] EWHC 1387 (Ch) at [29]. As Teare J put it in *Cunningham v Ellis* [2018] EWHC 3188 (Comm) at [87]:
>
> > "For these purposes, that which must have been discovered or discoverable by the claimant before the limitation period will begin to run is knowledge of the essential facts constituting the alleged fraud. It is not sufficient that the claimant knows that there has been some unspecified deception (see McGee at [20-013] and *Barnstaple Boat Co Ltd v Jones* [2007] EWCA Civ 727) or only of a fraud "in a more general sense" as opposed to the precise deceit" (see *Horner v Allison* [2014] EWCA Civ 117 at paragraph 14).""

95. However, that is not to say that in order for the test to be met a claimant must have been reasonably able to discover every single pleaded allegation in the pleading ultimately served. As Cockerill J put it in *Loreley Financial (Jersey) No. 30 Limited v Credit Suisse Securities (Europe) Ltd* [2023] EWHC 2759 (Comm), in the context of a claim for fraudulent misrepresentation, at paragraph 242:

> "It is not necessary in my judgment (based on the analysis of the authorities) for the precise case now run to have been available. Nor need the exact details have been available. What is necessary is that a case of the same nature (fraudulent misrepresentation) based on essentially the same representations could have been run."

96. It should also be noted that, in *Seedo v El Gamal* Nugee LJ explained, at paragraph 51, that where, as here, the limitation issue is to be determined before trial, the question of limitation is determined on the assumption that the facts alleged by the claimant will in due course be proved. He also emphasised, at paragraph 49, that the relevant inquiry is when the claimant knew enough to plead the claim in fraud, and that the *FII case* made clear (in particular at paragraphs 177, 196 and 199-202) that a claimant can know enough to plead a claim without knowing whether it would succeed. The "*fact that the defendant disputes an element of the cause of action does not mean that the commencement of the limitation period is postponed until that dispute is resolved.*"

97. The claimants also emphasised that the knowledge of a claimant's agent is not sufficient to start time running, relying on *Riyait v Dawett* [2018] EWCA Civ 593. In that case, at paragraphs 34-36, Sir Geoffrey Vos MR confirmed that knowledge of the claimant's agent is not to be attributed to the claimant for the purpose of answering the question whether the claimant has established that he had not discovered the fraud or could not

with reasonable diligence have discovered it at a particular time. Uber in response confirmed that they were not so relying on knowledge of any agent of the claimants here by way of attribution to the claimants.

Reasonable diligence

98. When it comes to the question of what a claimant could with reasonable diligence have discovered, what has subsequently been described as "authoritative guidance"[5] was given by Millett LJ in *Paragon Finance plc v DB Thakerar & Co* [1999] 1 All ER 400 at 418:

> "The question is not whether the plaintiffs *should* have discovered the fraud sooner; but whether they *could* with reasonable diligence have done so. The burden of proof is on them. They must establish that they *could not* have discovered the fraud without exceptional measures which they could not reasonably have been expected to take. In this context the length of the applicable period of limitation is irrelevant. In the course of argument May LJ observed that reasonable diligence must be measured against some standard, but that the six-year limitation period did not provide the relevant standard. He suggested that the test was how a person carrying on a business of the relevant kind would act if he had adequate but not unlimited staff and resources and were motivated by a reasonable but not excessive sense of urgency. I respectfully agree."

99. In *Law Society v Sephton & Co* [2005] QB 1013 Neuberger LJ explained at paragraph 116 that:

> "there must be an assumption that the claimant desires to discover whether or not there has been a fraud. … Further, the concept of "reasonable diligence" carries with it … the notion of a desire to know, and, indeed, to investigate."

100. In *OT Computers* (above) Males LJ noted at paragraph 47 that:

> "…although the question what reasonable diligence requires may have to be asked at two distinct stages, (1) whether there is anything to put the claimant on notice of a need to investigate and (2) what a reasonably diligent investigation would then reveal, there is a single statutory issue, which is whether the claimant could with reasonable diligence have discovered (in this case) the concealment. Although some of the cases have spoken in terms of reasonable diligence only being required once the claimant is on notice that there is something to investigate (the "trigger"), it is more accurate to say that the requirement of reasonable diligence applies throughout. At the first stage the claimant must be reasonably attentive so that he becomes aware

[5] See e.g. *Law Society v Sephton & Co* [2005] QB 1013 Neuberger LJ at paragraph 110; the *FII case* at paragraph 203.

> (or is treated as becoming aware) of the things which a reasonably attentive person in his position would learn. At the second stage, he is taken to know those things which a reasonably diligent investigation would then reveal. Both questions are questions of fact and will depend on the evidence. To that extent, an element of uncertainty is inherent in the section."

101. The issue of the extent to which the test of reasonable diligence falls to be qualified by the particular circumstances of the claimant was also considered in *OT Computers*. Males LJ referred to what had been said by Hoffmann NPJ when he left the question open in the Hong Kong case of *Peconic Industrial Development Ltd v Lau Kwok Fai* [2009] 5 KHC 135, and then at paragraph 38 stated:

> "Commenting on this decision in *Hussain v Mukhtar* [2016] EWHC 424 (QB), Martin Chamberlain QC (sitting as a deputy High Court judge) suggested that this did not mean that personal characteristics such as naïveté and inexperience in financial matters should be taken into account as to do so would involve a departure from the objective standard which the cases require. I would agree that personal traits or characteristics bearing on the likelihood of the particular claimant discovering facts which a person in his position could reasonably be expected to discover, such as whether the claimant is slothful, naïve, shy, nervous, uncurious or ill-informed, are not relevant. But it does not necessarily follow, as Lord Hoffmann NPJ said in *Peconic*, that the claimant must be assumed to be someone or something which he is not."

102. As Males LJ went on to note at paragraph 39, the Supreme Court in the *FII case* affirmed at paragraph 255 that "*the answer to the question arising under section 32(1) does not depend upon the characteristics of the particular claimant: whether, for example, it was inclined to await further developments, and to allow other taxpayers to make the running. The standard is 'could'...*". In other words, choices made by a particular claimant, or a particular attitude demonstrated as to investigating relevant matters, would not affect the inquiry, which was an objective one – what the claimant *could* have discovered. However, as Males LJ concluded at paragraph 48, the question is what "the claimant", in other words the actual claimant, could have learned if it had exercised reasonable diligence, not some hypothetical claimant.

103. Similarly, in *Sculfor v MGN Limited* [2026] EWHC 597 (Ch), Fancourt J held at paragraph 191 (in a case dealing with deliberate concealment) that, when it came to the question of reasonable diligence:

> "…it is not a hypothetical person but the Claimant themselves who are in consideration. The question is whether and when they could with reasonable diligence have discovered the concealment. If, in order to discover the concealment, they reasonably needed the benefit of advice and information from someone, then, in principle, time does not start to run until they could with reasonable diligence have obtained it. Reasonable

> diligence does not require a claimant to use the most expeditious means of discovering the facts, as long as what they did was reasonably diligent."

104. However, discovery of a fraud or concealment does not presuppose that the claimants would have been able to obtain legal advice that they had a worthwhile claim, still less that a particular firm of solicitors would have been willing to represent them (see *Sculfor*, paragraphs 37-38, 164, 173).

105. It was common ground before me that the burden under s.32 lies on the claimants to prove that they had not discovered, and could not with reasonable diligence have discovered, the relevant facts (see, for example, *OT Computers* at paragraph 52).

Privilege

106. In its skeleton argument, Uber drew attention to what is said in The Law of Privilege, Thanki and Oppenheimer (4th ed.) at paragraph 5.129:

> "…a claimant may find it hard to maintain that the limitation period should not begin to run from a period in which he was in receipt of legal advice unless he is prepared to waive privilege in that advice."

107. When seeking to rely on s.32 a claimant may often have to consider whether to waive privilege over their communications with legal advisors regarding when and how they first sought legal advice, in order to discharge their burden of proof under s.32 (see, for example, what was said by Bright J in *Upham v HSBC UK Bank plc* [2024] EWHC 849 (Comm) at paragraph 610). No privilege has been waived in this case. However, as the claimants noted in their submissions, there is no requirement that such a waiver be given, and the court should not draw adverse inferences against a claimant simply because privilege is maintained (see *Sayers v Clarke Walker* [2002] EWCA Civ 910 at paragraph 16).

108. Uber were not, here, seeking to draw an adverse inference from the fact that privilege had not been waived, but rather to point to what they suggested was an evidential gap in the circumstances of this case. It is the claimant's burden to discharge, and the consequence of a claimant choosing not to waive privilege may be that it fails to discharge the burden of proof under s.32. I will consider what the evidence shows (and what inferences can be drawn from it) below, but it is worth noting at this stage certain matters relating to the instruction of lawyers by the claimants and to privilege:

    i) There was no real dispute that none of the claimants took legal advice in relation to a potential claim against Uber until the first of the individual claimants retained Mishcon de Reya in October 2018, i.e. after the period of time in which their knowledge is in issue. This is not, therefore, a case where claimants are seeking to argue that the limitation period under s.32 had not started to run even at a time when they were already in receipt of legal advice.

    ii) As I have noted above, and explained in further detail in the disclosure judgment, Mishcon de Reya were retained, during the relevant period, by the claimants' former litigation funder, Harbour, to investigate potential claims

against Uber, and documents containing or evidencing Mishcon de Reya's advice to Harbour are subject to Harbour's legal advice privilege, which Harbour (who is no longer involved in this litigation) has made it clear it is not prepared to waive. Those documents were not, therefore, in evidence at the trial. They may or may not have shed light on some of the issues but their absence cannot be laid at the door of the claimants or of the defendants.

iii) Documents passing between Mishcon de Reya and the LTDA or individual drivers created during the course of the Harbour retainer have (subject to redaction for Harbour's legal advice privilege) been disclosed to the extent that they relate to the actual knowledge or understanding of an individual driver of a potential claim against Uber.

Pleading fraud

109. The claimants emphasised the particular rules that apply to the making and pleading of allegations of fraud and dishonesty. Fraud should not be alleged or pleaded on a speculative basis (see, for example, *Playboy Club London Limited v Banca Nazionale Del Lavoro SpA* [2018] EWCA Civ 2025; [2019] LLR 90 Sales LJ at paragraph 46; *Libyan Investment Authority v Credit Suisse* [2021] EWHC 2684 (Comm), HHJ Pelling KC at paragraphs 28 and 31). The claimants noted that the Bar Standards Board Handbook specifically prohibits a barrister from making any allegation of fraud unless they have clear instructions to allege fraud and they have reasonably credible material which establishes an arguable case of fraud, and that the SRA Code of Conduct requires that solicitors only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable. In *Medcalf v Mardell* [2002] UKHL 27; [2003] 1 AC 120, Lord Bingham at paragraph 22 referred to the need for counsel to exercise an objective professional judgment whether it is in all the circumstances proper to lend their name to the allegation, and should have material before them which they judge to be reasonably credible and which appears to justify the allegation (albeit such evidence does not, at that stage, necessarily have to be in admissible form).

110. In *Three Rivers v Bank of England* [2001] UKHL 16, the House of Lords made it clear that (i) fraud must be clearly pleaded using unequivocal language (Lord Hope at paragraphs 55-56 and Lord Millett at paragraph 185), and (ii) allegations of fraud and dishonesty must be sufficiently particularised with primary facts from which dishonesty (and not mere negligence) can be inferred (Lord Millett at paragraph 186). But, at the interlocutory stage in considering whether a plea of fraud is a proper one, it is not a question of determining whether the evidence will or will not establish fraud, but only whether the facts pleaded would justify the plea, as explained by Flaux J in *JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm) at paragraph 20:

> "The claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. As Lord Millett put it, there must be some fact "which tilts the balance and justifies an inference of dishonesty". At the interlocutory stage, when the court is considering whether the plea of fraud is a proper one or whether to strike it out, the court

> is not concerned with whether the evidence at trial will or will not establish fraud but only with whether facts are pleaded which would justify the plea of fraud. If the plea is justified, then the case must go forward to trial and assessment of whether the evidence justifies the inference is a matter for the trial judge. This is made absolutely clear in the passage from Lord Hope's speech at [55]-[56] which I quoted above."

111. There is, however, nothing inherently objectionable in the pleading of a case in fraud or dishonesty by reference to the reasoned conclusions of a third party, even if the person signing the statement of truth has not seen the materials on which the third party has relied, although it will likely depend on the circumstances. As explained by Newey LJ in *Persons Identified in Schedule 1 v Standard Chartered plc* [2024] EWCA Civ 674; [2024] 1 WLR 4589 at paragraph 51:

> "51. Further, I can see nothing inherently objectionable in a claimant "piggybacking" on allegations made by a third party. The fact that someone else has made an allegation will not necessarily, of course, mean that a drafter has "reasonably credible material which establishes an arguable case of fraud" or that a claimant is in a position to verify with a statement of truth a pleading repeating the allegation. For one reason or another, the allegation may not be thought credible or at any rate to be sufficiently substantiated. On the other hand, I do not think there is any bar on a claimant repeating or adopting an allegation made elsewhere and, if it is made or vouched for by an apparently plausible source, there may be good reason to believe it to be true."

Lord Bingham had made a similar point at the end of paragraph 22 in *Medcalf v Mardell*.

The trial

112. I have already noted that, on the claimants' side, disclosure was given from 20 sample black cab claimants and from Mr Peters, as well as from the LTDA. Only three witnesses were called by the claimants to give evidence at the trial (and none were called by Uber). The three were:

i) Mr Kevin O'Connor, who is one of the sample claimants and was a black cab driver for over 20 years between 2000 and 2022. Mr O'Connor was a full time Central London driver. He was not active on social media during the period relevant to the claim and, although he was a member of a cab driver WhatsApp group from February 2017 to March 2019, his chats were not responsive to any keyword searches as part of the claimants' disclosure for the preliminary issue trial and he therefore had no relevant documents to disclose. Mr O'Connor was not a member of the LTDA or any other trade association.

ii) Mr Daniel O'Regan, who is currently a black cab driver, having worked as one for the past 30 years. He was a member of the LTDA when he first started driving in the 1990s. However, because of a perceived lack of action around

Uber, Mr O'Regan left the LTDA and joined the LCDC. Mr O'Regan has been a Committee Member at the LCDC since around the end of 2015. Mr O'Regan attends stakeholder meetings with TfL, makes contributions to the LCDC's magazine *The Badge*, and engages with other LCDC members on social media platforms. Mr O'Regan was active in his desire to hold Uber to account. He disclosed a number of relevant documents.

iii) Mr Peters, who is the assignee of the claims brought by Kabbee and iRide and is the claimant in the second action. He was involved in setting up both companies (which are both now dissolved). Mr Peters is not and never has been a black cab driver (or a minicab driver), but he worked in the minicab industry between 2007 and 2020 as an operator. In 2015, he merged a number of minicab companies to form iRide, which had a fleet of around 800 cars. Kabbee's predecessor company was initially founded by Mr Peters in 2010, but was subsumed into Kabbee Exchange in 2012. Kabbee was an app that acted as a price comparison website and, at its peak, around 100 minicab companies were active on Kabbee. Mr Peters was not involved with the wider minicab trade and neither Kabbee nor iRide joined the LPHCA. Mr Peters was very aware of Uber and its impact on the minicab industry. Indeed that was the background to the iRide merger. Mr Peters had real concerns about Uber and he voiced these with TfL, the Mayor of London and by seeking to generate publicity more generally.

113. The situation was, therefore, that although the claimants accepted that they bore the burden of proving that they did not have sufficient actual knowledge of the potential claim against Uber during the relevant period, the vast majority of those selected as test claimants in the black cab proceedings did not give any evidence about that. Nor did the claimants seek to demonstrate what the actual knowledge of those specific individuals might have been from documents. The only claimants where there was any substantive evidence of their state of actual knowledge were the three who the claimants had chosen to give evidence, namely Messrs O'Connor, O'Regan and Peters.

114. However, the utility of the preliminary issue in this case is greater in relation to the question of what could reasonably have been discovered, rather than in relation to actual knowledge of particular individuals, which is likely to be more difficult to "roll out" across the wider claimant cohort. That is no doubt why the parties' emphasis in their submissions was more on the question of reasonable discoverability. For that reason, I will deal first with what was reasonably discoverable by the claimants, rather than the actual knowledge of the three individuals who gave evidence.

Discussion and analysis – reasonable discoverability

115. The claimants emphasised that what was to have been discovered, or could with reasonable diligence have been discovered, is the fraud or deliberate concealing actually alleged (not some other fraud or wrongdoing). It is, therefore, important to identify the key facts on which the claimants' pleaded case in conspiracy is founded.

116. The pleaded cause of action is conspiracy to injure by unlawful means. Paragraphs 41 and 42 of the Amended Particulars of Claim identify three broad forms of unlawful means that are relied upon: (a) deliberate and dishonest misrepresentations to TfL; (b) dishonest failures to disclose material information to TfL; and (c) intentional unlawful

operation of private hire transport services across London or, as it was also put, conduct in knowing or reckless breach of provisions of ss. 2 and/or 4 of the 1998 Act.

117. The first of these forms of unlawful means, comprising alleged misrepresentations to TfL, is based upon various representations alleged to have been made by Uber to TfL (referred to in the pleading, as I have already noted, as the 2012, the 2014, the 2015, the 2016 and the 2017 Representations). The claimants allege that, by those representations, Uber falsely misrepresented that all bookings were accepted by Uber London, not by the drivers, whereas in fact (so the claimants allege) bookings were accepted by the drivers in their vehicles. The claimants go on to plead that Uber knew that those representations were false, and that Uber knew that if honest and correct information concerning Uber London's booking and operating system was provided to TfL, Uber London would not have been entitled to and would not have been granted a PHVO licence. In other words, it is alleged that Uber deliberately deceived TfL so that Uber London would be granted and be able to retain a PHVO licence.

118. The second form of unlawful means that is alleged relates to Uber's alleged misrepresentation of, or failure to disclose, the Uber Group's use of the "Greyball" technology and the "kill switch" (or "Ripley") technology – information which is alleged to have been material to Uber London's fitness to hold a PHVO licence. It is alleged that Uber was fully aware of the information regarding Greyball and Ripley and knew that it should have been disclosed to TfL but that, despite that knowledge, Uber deliberately withheld the information about Greyball and Ripley from TfL because it knew that if it was provided to TfL, Uber London would not have been granted or allowed to retain a PHVO licence. This is, therefore, an allegation of deliberate concealment of Uber's use of Greyball and Ripley.

119. The third form of unlawful means alleged is that Uber knew that Uber London's business and operating model did not comply with ss. 2 and 4 of the 1998 Act and knew that if a full and honest account of that model was given to TfL, TfL would have concluded that Uber London was not a fit and proper person to hold a PHVO licence. It is also alleged that Uber London was not entitled to, and would not have been granted, a PHVO licence if it had provided TfL with honest and correct information concerning its booking and operating system and the Uber Group's use of Greyball and Ripley.

120. The claimants explained in their written closing submissions (at paragraph 33) that, although this third form of unlawful means is distinctly alleged, it is in reality parasitic upon the first and second forms of unlawful means. The claimants said that it is because of Uber's alleged deliberate misrepresentations to TfL in relation to the acceptance of bookings, and because of Uber's alleged deliberate failure to disclose material information to TfL, that it is alleged that Uber must have known that Uber London's business and operating model did not comply with the requirements of the 1998 Act and that Uber London was not a fit and proper person to hold a PHVO licence. As a result, said the claimants, it is the first and second forms of unlawful means that are the critical unlawful means relied upon in support of the conspiracy claim. The claimants addressed the question of knowledge, therefore, by reference to the first and second forms of unlawful means. Whether "parasitic" is strictly accurate (suggesting, as it does, that the third form of unlawful means could not have been advanced without the first two), it seems to me difficult to see that the claimants could have had sufficient knowledge to advance the allegations in respect of the first and second forms of unlawful means without also having had sufficient knowledge to advance the

allegations in relation to the third, such that for these purposes I will adopt the claimants' focus on the first and second forms of unlawful means.

121. As the claimants identified, discovery of the facts underlying the first and second forms of the pleaded unlawful means would have involved discovery of (a) what passed between Uber and TfL, in the form of representations made by Uber to TfL and information provided by Uber to TfL or (as the case may be) withheld by Uber from TfL; (b) whether the information provided by Uber to TfL was false and known to be such by Uber; and (c) whether Uber deliberately failed to disclose material information to TfL.

122. I have set out above the various aspects of the background facts that were relied on by the parties as to what the claimants did, or could reasonably have, discovered. It is clear that there were a number of different people, or groups of people, who were interested from the outset of Uber's arrival in London in how Uber's system operated and (among other things) how bookings were taken, with a view to seeking to establish that Uber was not operating within the statutory framework and should not have a licence. From the Clifford Chance letter in December 2013 onwards, it is clear that different groups of those involved in the private hire and black cabs trades were seeking to find out what they could, and were analysing what they had found out. There was a view held by many of those who were critical of Uber in the private hire and black cab trades that Uber was not in compliance with the statutory framework, including in respect of the taking of bookings.[6] The inconsistent evidence given in the *Taximeter*, the *City of Toronto* and the *Aslam* cases clearly fuelled those views, and provided a reasonable basis for them. Some (such as Chris Johnson) carried out their own analysis, others would have read material in the publications drawing similar conclusions (e.g. *The Badge*) or exchanged views to similar effect on social media. It is also clear that those involved in these trades appreciated, very soon after Uber started to operate in London, that they were losing work to Uber, such that they were suffering loss.

123. There was certainly enough information generally known and understood about the way in which Uber was operating to approach lawyers to explore what courses of action might be available, as indeed a number of groups obviously did, e.g. the LPHCA who engaged Clifford Chance at an early stage, and the LTDA, which engaged Michael Demidecki & Co, not only for the purposes of the *Taximeter* proceedings but also in subsequently writing to TfL objecting to the renewal of Uber's licence. Those engagements were, as far as the evidence showed, seeking to make progress with TfL in requests to cancel or not renew Uber's licence. However, even beyond that it would have been a reasonable step to take also to explore a claim against Uber, in particular in light of the fact that it was obvious (as it had been since Uber entered the market) that the existing trades were losing business to Uber. These points do not approach an analysis of the question whether the claimants had, or could reasonably have had, sufficient knowledge to bring the claims in question – I will come on to that – but seem to me to suggest that at least by the time of Ms Bertram's statement in the *Aslam* proceedings, in mid-2016, there was a trigger for the investigation of such claims. The representations that are alleged are at least in part based on material in the public domain (e.g. the position as Uber presented it in the *Taximeter* litigation) or on implication from what Uber must have told TfL in order to obtain and retain its licence,

[6] In addition to the points made above in relation to this, see for a further example the summary of Mr O'Regan's understanding and knowledge, at paragraph 163 below.

and the material that was by then in the public domain (including from the *City of Toronto* and *Aslam* cases) coupled with the conclusions that those interested were drawing in any event (such as Mr Johnson with his charts, and the various cabbies' social media and other messages referring to how they understood Uber operated) was sufficient to suggest there may have been some misrepresentation or other similar conduct that was worth investigating.

124. At the hearing, there was no issue that there had been a "trigger" (in the sense referred to e.g. in *OT Computers*) – the claimants admitted that the DL itself was such a "trigger" – but only as to when that occurred. It appears to me it was earlier than the DL, as I have described, but given the claimants' admission about the DL that matters little, if at all. Also, although Uber put weight on the matters preceding the DL in terms of providing information to the claimants about their claims, they put most weight on the DL itself.

125. The argument at the hearing therefore largely revolved around whether by the time of the DL becoming public, and in light of the contents of the DL, the claimants had, or could reasonably have had, sufficient knowledge to bring the claims.

126. Before coming on to its contents, I should address its availability. It was, as I have said, in the public domain from 20 December 2017, which was the date it was posted on the LTDA website (which was open to the public). There was a suggestion in the claimants' skeleton that it did not follow that each and every claimant would have read it, still less that Mr Peters would have seen it. Mr Peters, it was emphasised was not a black cab driver or an LTDA member, and would have had no reason to go on to the LTDA website, and was not aware of the actual DL. I do not accept that those points mean that the DL was not reasonably available to all the claimants, including Mr Peters. There had been some years of protest and complaint about Uber, which was seriously affecting the business of black cabs and minicabs, and there was much publicity concerning the TfL decision not to renew the licence and, then, Uber saying it would appeal it. Anyone who was interested in considering a claim against Uber would have followed the story, and can reasonably have been expected to find the DL once it had become public. Its release by TfL was also reported widely, for example in the article in *The Sunday Times* on 24 December 2017 (which contained a number of quotations from the DL), and noted in Mr Gouriet's article on his website. As Males LJ made clear in *OT Computers*, the requirement of reasonable diligence applies throughout – the claimant is treated as becoming aware of the things which a reasonably attentive person in his position would learn.

127. I have already noted that the claimants accepted that the DL provided them with some important information relating to (what has become) their claims. In summary, the claimants accepted:

    i) The DL contained credible information as to the specific representations that Uber had made to TfL as to Uber's booking process and why, in TfL's view, those representations were false.

    ii) The DL addressed Uber's failure to disclose material information as to the existence and use within the Uber group of Greyball (though not the Uber group's use of Ripley).

iii) The DL referred to the outcome of an IT systems architect review (conducted by Deloitte on TfL's instruction), which led TfL to conclude that Uber's previous representations as to the sequence in which Uber accepted bookings and drivers accepted the trips were false.

128. However, the claimants also contended that there were important gaps in and qualifications to the DL, in terms of what the Cs could "discover" from it, which they identified in summary as follows: first, and most importantly, the DL did not express a view as to whether Uber knew of the falsity of its representations to TfL; second, by the time the DL was published on the LTDA website on 20 December 2017, it was already in the public domain that Uber was appealing TfL's decision and that the licensing appeal would proceed by way of a rehearing of Uber's application to renew its licence; third, and relatedly, since the appeal would be a rehearing, the evidence and arguments deployed by Uber and TfL on the appeal would not be confined to the evidence and arguments that were presented to TfL in the lead-up to the DL; and fourth, TfL made statements in October and November 2017 to Michael Demidecki & Co that sought to diminish the importance of its treatment of the booking acceptance issues in the DL.

129. I will explain those points, as made by the claimants, in slightly greater detail. Of those points, the most important is the first, namely the fact that the DL did not express a view as to whether Uber knew of the falsity of its representations to TfL. The claimants contended that the DL did not contain any assessment or conclusion of TfL with regard to issues of fraudulent intention and deliberate concealment, and that the DL also suggested that mere negligence undermined Uber's fitness for holding a PHVO licence. They also suggested that the DL demonstrated that TfL had been "unable" to reach a view as to whether TfL knew of the falsity of its representations. This requires looking at the DL.

130. It was clear from the DL that TfL considered that Uber had misled it, going back to 2014, as to as to the process by which bookings were accepted through the Uber app, and that Uber's answers to TfL's questions had been "materially false and misleading." This was not bare assertion, but relied on TfL's detailed account of matters such as the evidence given on behalf of Uber in the *Taximeter* litigation, in the *Aslam* case and in the *City of Toronto* case, and the investigation which TfL had carried out in the light of that evidence in 2016 and 2017, including with technical assistance from Deloitte. Thus:

> "ULL's prior assertions, that the dispatch servers arranged for drivers to discharge a booking already accepted by ULL, and that receipt and acceptance by ULL of the passenger's booking takes place at the same time as the relevant driver is notified of the booking, were false."

The DL later, under the heading "Conclusions", repeated the finding that Uber had provided materially false information about its booking acceptance process in 2014 and 2015, stating as follows:

> "ULL's provision of materially false information about its booking acceptance process in 2014 and 2015, as compared to the reality as explained in later correspondence and clarified by

> the IT Architect's investigation. ULL has attempted to play down the changes. It says that it has not mislead TfL and has been consistent in its explanation of the process. However, the evidence shows that this is incorrect. ULL's description of its processes in 2014 was misleading on a material point. (TfL is currently minded to think the point is determinative, and that ULL's current operating model is accordingly unlawful, but the provision of materially false information is relevant to ULL's fitness and propriety irrespective of this point.) Either ULL knew that the information provided was misleading, or it did not understand its own systems sufficiently (despite assertions to the contrary). In either case, we consider that this is sufficient to undermine ULL's fitness to hold a London PHV Operator's Licence. It is essential, in the interests of protecting the public, that TfL can be satisfied that licensed operators provide accurate, full and frank information that TfL can rely on. The fact that TfL is unable to do so gives us serious concerns."

131. The claimants placed particular weight on the sentence "*Either ULL knew that the information provided was misleading, or it did not understand its own systems sufficiently (despite assertions to the contrary)*" as demonstrating that TfL had been *unable* to reach a view on whether Uber knew of the falsity of the information that it had provided. I do not accept that sentence, or anything else in the letter, does show that. Rather, what TfL was there saying was that it did not *have to* come to a view on that point for the purpose of its decision about renewing the licence, not that it was *not able* to do so or could not have done so if that had been necessary. The claimants suggested that if Uber had deliberately misled TfL that would have been very relevant to TfL's consideration of the issue whether Uber was a fit and proper person to hold a PHVO licence. That may well be the case but, as TfL noted, it did not have to go that far because it noted that if Uber had not been deliberately misleading, the only other explanation was that Uber did not sufficiently understand its own systems (despite assertions to the contrary) which point itself would render it unfit to hold a licence. In other words, it cannot be read into the TfL decision letter that TfL felt unable to conclude that Uber had deliberately misled TfL. TfL clearly contemplated that might have happened, but that it did not have to reach a view on the point.

132. It is of course right, however, that TfL did not express a conclusion on whether Uber had known its representations were false. The claimants contended that they were not therefore in a position to advance a case that Uber had deliberately misled TfL. They pointed out that the underlying correspondence and other documentation and information reviewed by TfL was not available, including the Deloitte report relied on by TfL dealing with the process flows within Uber's operating model, such that the claimants (and any putative legal advisers who were considering the matter on their behalf) were left only with the conclusions reached by TfL in the DL, and would not have been able to go further than that and consider that they had reasonably credible material supporting a plea of fraud or deliberate concealment. I will come back to that.

133. The claimants' second and third points, as identified in paragraph 128 above, related not so much to what was contained in the DL itself, but rather to what was taking place

around the DL. They noted that by the time the contents of the DL came into the public domain on 20 December 2017, it was already also in the public domain that Uber was appealing TfL's decision and that the licensing appeal would proceed by way of a rehearing of Uber's application to renew its licence, such that the evidence and arguments deployed by Uber and TfL on the appeal would not be confined to the evidence and arguments that were presented to TfL in the lead-up to the DL. The claimants suggested that the evidence to be relied upon could reasonably have been expected to comprise not only documentary evidence but also witness evidence in written and oral form. Following the case management hearing on 19 December 2017, it was also known that the hearing of the licensing appeal would commence on 25 June 2018. The claimants also noted that the list of issues for the licensing appeal, once it was drawn up, contained the issue: "*Whether the provision of incorrect information to TfL was deliberate*" (in the revised list of issues dated 27 April 2018). These matters, said the claimants, added greater weight to the fact that TfL had not reached a conclusion on the question whether Uber had known its representations to TfL were false – they said that any responsible solicitor or counsel facing such circumstances would have wished to see, at a minimum, the evidence presented during the appeal before concluding whether a case of fraudulent misrepresentation or deliberate concealment could properly be levelled against Uber.

134. These points do not assist the claimants. If the information available to them, including the contents of the DL, was sufficient to allow them to plead their claim, then the fact that there was to be a further hearing with (potentially) new evidence in the licensing appeal was irrelevant – they had the information they needed to plead the claim. The fact that further evidence might come to light, or that the court may consider a relevant question (such as whether the provision of incorrect information had been deliberate) which may strengthen or weaken the case (or may be neutral in that respect) does not mean a claimant cannot plead the claim on the basis of the information that it has. There may be some sense in waiting for further information, for example to avoid wasting time in pleading a claim that has to be amended, but the inquiry under s.32 is not about best practice or about the most efficient way to conduct litigation.[7] It is about whether or not the claimant knew (or could reasonably have known) enough to plead the claim.

135. The fourth point made by the claimants was to draw attention to the statements made by TfL in October and November 2017 to Michael Demidecki & Co which the claimants said sought to diminish the importance of its treatment of the booking acceptance issues in the DL. The claimants relied upon a letter from TfL to Michael Demidecki & Co dated 24 October 2017, in which (in response to a request whether TfL had considered the contents of an earlier Michael Demidecki & Co letter) TfL identified one of the points previously made by Michael Demidecki & Co as the suggestion that Uber's model "*leads to the result that its drivers are accepting bookings, not ULL itself*" and stated in response that that point was considered but was not part of the reasons for its decision. That was repeated in a letter of 10 November 2017, in which TfL rebutted Michael Demidecki & Co's requests for a copy of its reasons for refusing to renew Uber's licence.

[7] Lords Reed and Hodge in the *FII case* observed that it does not depend, for example, on whether a particular claimant "*is inclined to await further developments*" (at 110A; paragraph 255).

136. The claimants suggest this was not easy to reconcile with the DL and therefore created uncertainty as to the extent to which the contents of the DL could be relied upon. However, it does not appear to me to cast doubt upon the DL at all, or that it would have done at the time. The DL opens by stating that:

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

It then went on to identify the reasons why it was not granting Uber a further licence, including that it considered Uber had misled TfL as to the process by which bookings were accepted through the Uber app. In its conclusion, the DL made similar points, noting that TfL was currently minded to think that Uber's operating model was unlawful, but that the provision of materially false information was relevant to Uber's fitness and propriety irrespective of that point. In other words, this reason for the decision (in addition to the others in the DL, e.g. matters relating to Greyball) was centrally concerned with the misrepresentations made by Uber to TfL, rather than the fact that the operating model was unlawful, though TfL was minded to consider that it was. The letters to Demidecki & Co are entirely consistent with that, making it clear that the reason for refusing the licence was not the unlawfulness of the model itself. Those letters to Demidecki & Co did not go into detail as to what the reasons *were* for the refusal of the licence, consistent with TfL's position (as set out in those letters) that they had no obligation to explain their decision to anyone other than Uber, but of course once the DL itself was published those reasons were clear for anyone interested to see. The upshot is that the correspondence with Michael Demidecki & Co would not have signalled to any would-be pleader of a case against Uber that the DL should not be relied upon. It is also the case that the letters to Michael Demidecki & Co were not in the public domain, and although they were acting on behalf of the LTDA the claimants were at pains throughout the hearing to emphasise that the knowledge of the LTDA could not be attributed to any individual claimant. That being the case, it is difficult to see in any event how this correspondence could materially change matters.

137. The argument, therefore, really comes back to the content of the DL, and whether it put the claimants in a position where they could plead their claims of dishonesty and deliberate misleading of TfL. Even taking into account the points made by the claimants, it appears to me that it did:

i) As the claimants accepted, it is acceptable to plead a case, including a case of fraud, based upon the findings of a third party such as a public authority (see e.g. *Medcalf v Mardell* at paragraph 22; *Gemalto* at paragraphs 54-60; and *Various Claimants v Standard Chartered* at paragraphs 49-51). Here, that only takes Uber so far, because TfL in its DL did not make an express finding that Uber had intentionally misled TfL. Rather, it identified it as one of the possibilities. However, the DL provides a basis for much of the rest of the pleaded case.

ii) Even though the DL did not itself go so far as to expressly find dishonesty, or deliberate misleading, that does not mean that a pleader, following the proper approach to pleading dishonesty, could not have done so.

a) It is clear from the DL that TfL took the view that Uber had been precise and deliberate in the representations it had made. It rejected Uber's attempted explanations that it had only been dealing with matters at a high level. The DL noted (at paragraph 23) that:

> "The correspondence in 2014 was extensive and detailed. … Furthermore, ULL was clear and precise as to the 'chronology' of the acceptance process: its answers did not "lack precision"; on the contrary, they were precise, but false. The same is true of the evidence in the Taximeter case."

And later (at paragraph 25):

> "Nor is it the case that the current explanation is 'fuller' and, for that reason, more accurate or complete. ULL's presentation its processes in 2014 was full, but false in a material respect."

b) The DL made the clear point that either Uber had known the information it provided was misleading, or it did not understand its own systems sufficiently, despite its assertions to the contrary. It would have been open to the claimants to plead an inference that Uber did understand its own systems (as the DL says that Uber asserted it did), and thus to conclude that it must have been deliberately misleading. It is at least reasonably arguable that one would start from an assumption that a company like Uber understood its own systems, such that if it had made a series of misleading statements over a number of years about a matter central to its business and the regulation of that business, it could be inferred those statements had been made knowing them to be misleading. Indeed, effectively such a point is the first particular that the claimants have pleaded in their Amended Particulars of Claim in support of the plea that Uber knew the falsity of the pleaded representations (at paragraph 41.7(3)(a)):

> "At all material times, the Defendants had detailed knowledge of their booking and operating system. They therefore knew that the said Representations and each of them were, and/or the equivalent information supplied by ULL in its application for a PHVO Licence in 2012 was false, or alternatively were reckless as to whether they were true or not."

c) Other material in the letter cast doubts on Uber's *bona fides* more generally, not least its use of Greyball (which was in any event already known about through widescale press reporting). The Greyball tool was, as had been reported and as discussed in the DL, employed by Uber to seek to evade investigation by local law-enforcement officials. As the DL put it at paragraph (b), it had been used by some companies within

> the Uber Group "*for the purposes of evading regulatory enforcement in other jurisdictions.*" That itself suggests a corporate mentality not to be open with regulators. Moreover, the DL set out how Uber's response to its questions about Greyball had been unsatisfactory (describing them as "limited and dilatory") and concluded that Uber's "*correspondence has not been frank or open (as we would expect between an operator and the licensor/regulator*"). In the context of Greyball, the DL stated that Ms Bertram's conduct "- *in particular her correspondence with TfL - has been unsatisfactory and unhelpful*". The overall picture conveyed by the DL was that the Uber Group had used the Greyball tool to avoid investigation by local law enforcement (albeit not in the UK), and had been deliberately vague and evasive when TfL sought to make inquiries about it.

iii) Moreover, it is apparent from the Amended Particulars of Claim that the claimants took the view, when pleading out their case, that the DL did support the plea the Uber had deliberately mislead TfL. At paragraph 41.7(3)(b), they plead as follows:

> "Although the Claimants have not yet seen the full correspondence between TFL and ULL regarding these matters, until after disclosure the Claimants will rely on the fact that in both TFL's letter to ULL dated 22 September 2017 and its evidence filed in relation to the Magistrates' Court proceedings in March 2018 (and, in particular, the Witness Statement of Helen Chapman dated 29 March 2018, TFL's then Interim Director of Licensing, Regulation and Charging) TFL rejected ULL's explanations as to why ULL had given (admittedly) misleading and false information to TFL, and accordingly considered that ULL had deliberately misled it."
>
> (underlining added)

That paragraph is clear that the allegation that TfL considered that Uber had deliberately mislead it was based upon each of the DL and Chapman 1. In any event, as I explain below, Chapman 1 does not add any material new content on this point from the claimants' point of view.

iv) The view that Uber would disregard legal requirements in its own interests was widely held. For example, Mr Peters gave an interview to *The Telegraph* which it reported in its 30 March 2015 edition, quoting him as saying "*This is a company [Uber] that seems to have systematically broken the law on multiple continents in multiple cities at the same time ...*". Consistently, Mr Peters explained in his witness statement, in the context of the few years after late 2013 or early 2014 when he was trying to compete with Uber, that "*Uber was prepared to do whatever it took to succeed*" and confirmed in his oral evidence that he meant that Uber would "*disregard legal requirements if they needed to.*" Allegations of Uber's "deception" in the context of Greyball were widespread, for example the headline to *The New York Times* article that broke the story: "*How Uber Deceives the Authorities Worldwide.*" Such a view was then

underlined in January 2018 when Uber's use of the kill-switch technology it referred to as Ripley was reported. Although that had not figured in the DL, it would have supported the view of any reasonable pleader that Uber sought to play outside the rules.

138. In the circumstances, there was sufficient material for the claimants to plead an inference that the false representations had been made deliberately and dishonestly.

139. Although there was occasionally a sense from the claimants during the trial that they had to wait to understand whether Uber accepted TfL's findings (and their Reply at paragraph 32.2(2) suggested that was their position) by the time of their written closing submissions they clearly accepted that it was no part of the relevant test that time did not start to run unless and until the defendant admitted the relevant allegation of fraud or deliberate concealment.

140. The above deals with the first way in which the claimants advance their unlawful means claim. That was really their focus in terms of their submissions that they would not have been able to advance the claim before 25-26 June 2018, and in their written closing submissions they did not rely on any separate point that even if they could have advanced those points, they could nonetheless not have advanced their case on the second set of unlawful means, based upon concealment of Uber's use of the Greyball and Ripley technologies. In any event, it is clear that the DL (along with the press reports at the time) provided them with sufficient information to plead their case in that respect. The DL gave sufficient information for the claimants to plead their case on Greyball and it appears that the pleading they have put forward is largely if not wholly based on the DL plus the 3 March 2017 article in *The New York Times* in this respect. Whilst the Amended Particulars of Claim identifies additional Uber personnel (who were not named in the DL) who are said to have been involved in email chains discussing the use of Greyball at least as early as 2015, the key individuals Ms Bertram and Mr van der Woude were so identified. Moreover, it would have been a fair inference to draw from what was in the DL that there had been a deliberate decision not to tell TfL about the Greyball tool, particularly given the nature of the tool and also TfL's descriptions in the DL of Uber's response once it had started asking questions about it (including not only that it had been "*unsatisfactory and unhelpful*" but also "*not ...frank and open*" with reference to concerns about "*lack of candour*").

141. As to the kill switch technology known as Ripley, Uber's use of it became public knowledge, as I have said, when it was reported in the press in January 2018. It would have then been obvious that Uber had not reported its use of Ripley to TfL, because if it had done so it is an obvious inference to be drawn that TfL would have referred to it in the DL. Based on what was in the public domain in early January 2018, this claim could have been pleaded, and the claimants did not advance any developed argument in closing that it could not have been. In any event, even if the claimants were not able to advance the particulars relating to Ripley before 24-25 June 2018, that relates only to part of the second way in which the claimants pleaded their case in unlawful means conspiracy, and the fact that they have ended up including a further particular to support that case (i.e. Ripley) does not mean they could not have pleaded that case at all (based on Greyball).

142. Moreover, whilst the particulars ultimately pleaded in the Amended Particulars of Claim include allegations derived from the article in *The Guardian* dated 10 July 2022,

as I have already noted, the claimants confirmed in their oral opening submissions at trial that they did not contend that that was an essential part of the case without which the claim could not have been advanced; indeed the claimants' contention was that they could have pleaded their case within a few weeks of 25-26 June 2018.

143. I also note that, in the claimants' skeleton, it was said that the DL did not address the Uber group's corporate general culture and policy of frequently disregarding legal requirements for the operation of its services and avoiding or obstructing enforcement by regulatory authorities, which the claimants said was an important building block in their pleaded case. That point was not pursued with any great emphasis in closing. It was not a good point. The DL set out at length the use by the Uber group of the Greyball tool to seek to avoid or obstruct enforcement by regulatory authorities. Moreover, as set out above, it was a widely held view that Uber sought to work outside the rules – see e.g. Mr Peters' view as set out above at paragraph 137(137.iv) above. This was also a point made in the Clifford Chance letter in 2013, which noted that Uber's "*preferred approach appears to be to trade regardless of what local law allows, and then to seek to avoid enforcement action or to change the law as necessary.*" The DL also contained a section entitled "Corporate responsibility" which set out in detail TfL's concerns about Uber's activities and conduct which had an impact on the "*safety and security of the public and demonstrate a lack of corporate responsibility …*". Whilst not making the same detailed allegations as now relied upon by the claimants, that section was consistent with a general corporate culture of seeking to avoid legal or regulatory requirements.

144. It was also suggested in the claimants' skeleton that, in the DL, TfL said it was still (at that time) considering whether Uber's business model complied with the statutory framework in certain key respects and that it was "*currently minded to conclude that it does not*" whilst suggesting it had not come to a final conclusion. That does not assist the claimants. The facts were set out in the DL, and the claimants (with legal advice) were in as good a position as anyone else to come to a view whether, on the basis of those facts, Uber's model had not complied with the statutory framework. They did not need TfL's analysis of this in order to plead a case about it. In any event, TfL stated they were minded to conclude Uber was not compliant, such that if the claimants had (contrary to the above) needed to have TfL's view (even if only their "current" view), they had it – it cannot have been necessary for them to wait to find out TfL's final view on that point before being able to plead a case about it.

145. As a result, it is clear that the claimants, in compliance with the rules about pleading dishonesty and fraud, could have advanced their claims in a reasonable period (e.g. 4-6 weeks) after publication of the DL, and including the claims relating to Ripley in February 2018. They certainly did not need to await receipt of either the evidence filed in the licensing appeal or the Chief Magistrate's decision in order to do so. After publication of the DL, and certainly by February 2018, the claimants had, or could with reasonable diligence have, obtained such knowledge as would have allowed them and their professional advisers properly to plead a claim that would not have been liable to be struck out as unarguable or lacking a sufficient evidential basis. The claimants are unable to establish that they could not have discovered the fraud – to discover it they did not need to take exceptional measures which they could not reasonably have been expected to take. Black cab drivers generally were well-informed, through a number of sources (including their trade associations) in relation to Uber's operations, and there

was a prevailing view for a number of years before 2018 that Uber was operating unlawfully and must have misled TfL. Key material was publicly available, in particular the DL, and any black cab claimant who had exercised reasonable diligence could and would have discovered the facts necessary for the pleading of the claims that have been brought, at the latest by February 2018.

146. It is also relevant to note that the position did not change in any material respect, in terms of material supporting the plea of dishonesty, with the evidence served for the licensing appeal or in the judgment of the Chief Magistrate. On the claimants' case, these materials made all the difference between being able to plead the claims and not. But, on analysis of the points made by reference to those materials, they took the issue no further. Although the content of Elvidge 1 and the judgment appeared initially to be relied upon by the claimants as containing the material allowing them to plead their claims, in their closing submissions, their emphasis was very much instead on Chapman 1. In any event, Elvidge 1 and the judgment did not advance the material available to the claimants on the question of dishonesty:

i) As I have noted above, in Elvidge 1, Uber accepted that the information it had provided to TfL about its booking system had not always been correct. Mr Elvidge accepted (at paragraph 76) that letters from Uber to TfL in 2014 were:

> "unclear and confusing and, on the sequencing point, either incorrect or very likely to have given a false impression."[8]

He also referred to what Uber had said in its evidence in the *Taximeter* case, where it had been stated that Uber accepted bookings before a driver had been found, and stated (at paragraph 78): "*That is not correct.*" However, he was clear in saying (at paragraph 65) that he did *not* accept that "*our provision of incorrect information was intentional.*"

ii) In her judgment dated 26 June 2018, the Chief Magistrate recorded Mr Elvidge's acceptance that what had been said by Uber to TfL in relation to the acceptance of bookings was false, and that Uber had now accepted that it misled TfL and the High Court (in the *Taximeter* litigation), and she recorded that Uber had apologised for that. She held (at paragraph 18) that: "*It is sufficient to say that the correspondence gave a material false picture of the processes then used.*" However, she declined to decide whether Uber had deliberately provided false information to TfL as "*it would be unfair on those carrying out the correspondence on behalf of ULL if I were to make any finding of dishonesty without hearing from the people concerned. It is sufficient to say that the correspondence gave a material false picture of the processes then used.*" Mr Choo Choy confirmed in his oral opening submissions that it was fair to say that the judgment did not really add to what was already known.

iii) Neither Elvidge 1 nor the Chief Magistrate's judgment therefore advanced matters further from the point of view of claimants seeking to plead their case in fraud. On the key point that the claimants said was missing from the DL –

[8] He did not accept, however, that that correspondence had been clear and precise, but rather contended that it was ("*regrettably*") inconsistent and confusing (at paragraph 91).

whether Uber had intentionally misled TfL – neither Elvidge 1 nor the judgment assisted them. Elvidge 1 denied there had been any intentional provision of incorrect information, and the judgment expressly declined to decide the point.

147. Ultimately, in their closing submissions, the claimants put the weight of their argument on this point on Chapman 1, served on behalf of TfL in the licensing appeal, which the claimants contended "*at least implied that Ms Chapman did not believe Mr Elvidge.*" However, the claimants did not need a confirmation of TfL's view as to whether Mr Elvidge was to be believed in order to plead dishonesty, still less material which *implied* what TfL's view about that was. In any event, most of the content of Chapman 1 took matters no further than the DL, although it used different language to express TfL's view:

i) For example, Chapman 1 described an Uber letter of 22 April 2014 as "*unhelpful, short and curt*" and "*deliberately vague*" and "*shocking*", but not as dishonest; it rejected the suggestion in Elvidge 1 that Uber's position had been "*opaque*" but said rather that what Uber had said was not opaque but was "*clear*" and "*unequivocal*", and elsewhere referred to Uber's answers to TfL as "*precise, but materially false*", but that was a restatement in different terms of what had been said in the DL. Similarly, elsewhere she criticised Uber for not properly engaging with issues that had been raised by TfL, and referred to Uber as having been "*extremely defensive*" and providing "*unconvincing*" explanations.

ii) At paragraph 84, Chapman 1 noted Mr Elvidge's suggestion that there was nothing in Uber's internal documents to indicate any "*intention to deliberately mislead TfL in its 2014 correspondence*" and stated in response that she had not seen these internal documents and so was not in a position "*to comment on whether ULL's false statements were deliberately false*". However, she went on to make what she described as the "*fair and reasonable*" point that:

> "… ULL must have known how its operating model worked and the sequences that took place … The impression given was that ULL were extremely confident and sure of their operating processes and their compliance with the regulatory scheme." [underlining as original]

iii) Similarly, at paragraph 90, when addressing Mr Elvidge's concession that Uber's witness evidence in the *Taximeter* Litigation was incorrect (where it was said that Uber accepted the booking first before its being allocated to the nearest driver), Ms Chapman stated that:

> "… ULL must have known how its own systems operated and, therefore that the information was incorrect. I cannot accept Mr Elvidge's assertion that this was not "knowingly incorrect." ULL's evidence, supported by a statement of truth, was wrong; that was reflected in the flawed recitation of the facts in the judgment of Ouseley J. Mr Elvidge is certainly right that "*more effort should have been made*" to ensure that the information was clear an accurate … ULL provided

> false evidence to the High Court consistent with the false information it had provided to TfL, about an important aspect of its own booking system."

iv) The statement by Ms Chapman at paragraph 90, where she said that she rejected Ms Elvidge's statement that the evidence in the *Taximeter* litigation was "not knowingly incorrect" was heavily relied upon by the claimants. It was contended that amounted to a statement of TfL's view that Uber had been deliberately misleading in the *Taximeter* litigation on the key issue of whether Uber accepted bookings before they were allocated to drivers, which was a new piece of information that they could not have known about before receiving a copy of this statement.

v) However, it is important to look at why Ms Chapman said that in her statement. It was based upon the assertion that "*ULL must have known how its own systems operated*". It does not appear that there was any new information underlying that assertion (and the claimants did not suggest that there was). It was, no doubt, a perfectly sensible assertion or assumption to make in the circumstances, but it was not based on information only known to TfL or that someone else having considered the position could not have made. As I have already noted, it could equally have been made by someone considering what had been said in the DL alongside the other matters that were available at the time that have been set out above. This statement by Ms Chapman was a process of reasoning, effectively considering the two possibilities posited in the DL (and which she repeated at paragraph 120 of her statement) and, on the basis of the assumption that Uber must have known how its own systems operated, concluding the information must have been knowingly incorrect. However, the claimants did not need Ms Chapman or TfL to say that – it was a conclusion open to them to draw on what they already knew, at least to the standard that would have supported a pleading.

vi) It is also notable that, in respect of the 2014 statements Ms Chapman made it clear that she was not in a position in relation to the 2014 correspondence "*to comment on whether ULL's false statements were deliberately false*" (paragraph 84). (That Ms Chapman was not adding new facts to the analysis was also clear from that paragraph, where she said she had not seen Uber's internal documents.) It is also relevant to note that, when she came to the conclusion of this section of her statement, at paragraph 120, referring to Uber's "*provision of false and misleading information*" she went back to the position taken in the DL: "*Either ULL knew that the information provided was misleading, or it did not understand its own systems sufficiently (despite assertions to the contrary) …*".

vii) As to Greyball, the point in Chapman 1 that the claimants emphasised was Ms Chapman's explanation of correspondence she had seen which suggested that Ms Bertram had not merely been exposed to discussions regarding Greyball's use but rather that she "*proactively suggested [use of] it and encouraged other jurisdictions to consider actively using other anti-enforcement measures.*" That did include further information about Ms Bertram's role in relation to Greyball, but it does not add to the analysis as to whether Uber had deliberately withheld information about Greyball from TfL. That was as much a reasonable inference

to make based on the DL (and other information about Greyball in the public domain) as based on the information in Chapman 1.

148. In short, whilst the material referred to in and exhibited to Chapman 1 added depth to what had previously been said (in terms of identifying and exhibiting the documents that had previously only been summarised, and also referring to some additional documentation) it did not contain material that could have tipped the balance from not being able to plead a case in fraud or dishonesty to being able to do so.

149. The claimants contended in their closing submissions that Uber's point in this respect (that the evidence and judgment in the licensing appeal did not materially advance the dishonesty point) was an illegitimate use of hindsight. The claimants relied on what was said in *Allianz Global Investors GmbH v RSA Insurance Group Limited* [2021] EWHC 2950 (Ch), Miles J at paragraph 35:

> "When considering whether a fraud has been "discovered" the courts should take care to avoid the use of hindsight or attributing strands of information which have emerged over time greater significance than they would reasonably have assumed to a claimant contemporaneously: *FDIC v Barclays Bank* 2020 EWHC 2001 (Ch) at [44] ."

150. However, it does not appear to me that the way that Uber deployed this point did constitute such a use of hindsight. It was, in a sense, a cross-check against the primary analysis that the information known up to and including the DL was sufficient to advance the claim (as I have found it was, above), and went no further than drawing a logical conclusion from the claimants' own case. That case was that they could have pleaded their claims within a reasonable period of time after the handing down of the Chief Magistrate's judgment in the licensing appeal on 26 June 2018. Indeed, it is a positive plea in the claimants' Reply (at paragraph 32.6) that these materials revealed the claim:

> "The contents of Mr Elvidge's and Ms Chapman's witness statements, together with the Chief Magistrate's judgment, revealed that there was a potential claim for conspiracy to injure against the Defendants which might be investigated. The limitation period under section 2 of that Act did not begin to run before a reasonable period after 25 or 26 June 2018 at the earliest, when such investigations would have uncovered sufficient information to plead such a case."

151. Indeed, reasonably soon thereafter, Mishcon de Reya started signing up claimants, and then in mid-2019 sent a letter before action to Uber. The claimants advanced no case that there was additional information that they did or could reasonably have learned after the Chief Magistrate's decision which was necessary in order for them to advance the claim. Their case was that it was information obtained from the evidence served in the licensing appeal and the Chief Magistrate's judgment which gave them sufficient information to plead the case. That being their case, it does not appear to me to be illegitimate to look closely at that material to understand if it did in fact materially change things in that respect. If it did not, as I have found, that suggests (consistently with my findings above that the information known about or reasonably available up to

and including the DL was sufficient[9]) that the claimants could also have pleaded their case before becoming aware of that material.

152. As a result of the above, the claimants could, with reasonable diligence, have discovered sufficient facts to be able to plead their case before the hearing of Uber's licensing appeal, the Chief Magistrates' judgment and the contents of Elvidge 1 and Chapman 1 becoming public. They could have pleaded their case on the basis of the material they could have discovered up to the end of 2017, in particular in reliance upon the DL, plus the press reports in January 2018 concerning Uber's use of the Ripley tool. As a result, for the purposes of s.32, the claimants could, with reasonable diligence, have discovered the alleged fraud and/or deliberate concealment before 25 June 2018. Accordingly, all the claimants' claims are time-barred.

Actual knowledge

153. The conclusions I have reached above mean that whether any or all of the claimants had actual knowledge sufficient to prevent their reliance on s.32 is not determinative of any of their claims. In addition, as I have noted, the claimants only put forward evidence of the state of actual knowledge of three people – Mr O'Connor, Mr O'Regan and Mr Peters – such that I am not in a position to make a positive determination as to the state of knowledge of any of the other claimants, including the other sample claimants who decided not to give evidence at the preliminary issue trial.

154. There was a suggestion from the claimants that, given that disclosure had been given by the sample claimants, it was up to Uber to identify any documents which were said to have indicated that any of the other sample claimants had the relevant knowledge, in the absence of which I should conclude they did not, but that seems to me to take the wrong approach to the burden of proof. All the sample claimants had the opportunity to put in a statement, even if only a very short one, saying what their level of knowledge was or identifying what they did not know of the facts said to be crucial, but they did not do so; nor did any offer a submission containing an analysis of their state of knowledge by reference to the documents. No compelling reason was offered as to why. If it had been necessary to come to a conclusion on whether the other 18 sample black cab claimants had had sufficient actual knowledge such that they could not rely on s.32 in the circumstances of this case, it seems to me I would likely have required further submissions on this (in light of the other findings I have made in this judgment), but without more I do not see how I could have found that any of them had discharged the burden of proof upon them. Whilst it may have been intended that the factual findings made in respect of the sample claimants would allow the parties to identify whether, and if so how, those findings could be "rolled out" across the entire cohort of black cab claimants, I do not see how it could have been intended that, within the sample claimant cohort, the claimants were entitled themselves to select a smaller number whose knowledge would be the subject of evidence and submissions, and for the findings about their knowledge to be rolled out across the remainder of the *sample claimant* cohort.

155. As to the three witnesses who gave evidence, whilst, as I have already noted, their level of actual knowledge is not determinative of their claims, given that each gave evidence I will summarise my findings as to their individual knowledge and understanding.

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[9] Plus the January 2018 press reports in relation to Ripley.

Mr O'Connor

156. Mr O'Connor, as I have noted above, was a black cab driver for over 20 years between 2000 and 2022, but was not active on social media at the relevant time, and had no relevant documents to disclose. He was not a member of the LTDA or any other trade association. The gist of his evidence about his general routine was that he generally worked nights, which was very solitary, and had only brief conversations with other drivers on the job. Whilst his brother was also a cab driver, Mr O'Connor said he rarely, if ever, "talked shop" with him. He never joined a black cab protest against Uber.

157. He knew that Uber's business was affecting his income – he believed that he was suffering a significant decline in business from not long after Uber entered the London market in 2012 and that Uber was having a negative impact on his own trade. He discussed the impact that Uber was having on his business with his brother, with Mr White and with other black cab drivers. He also believed other black cab drivers were also suffering financial loss as a result of Uber's entry into the market: "*I think everybody in the trade was affected by it. We all knew it was affecting us.*" He knew that others, including Mr White, held strong views on the subject.

158. However, he professed that he had little interest in what might be done about it. He said he just did his work and went home. To an extent he sought to explain his disinterest in this by his evidence that there was "*too much going on in my life*" and that he had a lot "*going on at home*", explaining that both his father in law and mother in law suffered with Alzheimer's. He said he had heard on "the grapevine" about the TfL decision not to renew Uber's licence, but he thought that the DL was not major news, and that he simply assumed at the time that Uber would get its licence back, professing a fatalistic view that "*I knew they'd get it back. … Big business always does get it back.*"

159. I do not consider Mr O'Connor was being untruthful in his evidence. He effectively resigned himself to the fact that Uber was taking away his business and there was nothing he could really do about it, apart from plough on as he always had done the best he could. He simply did not take an interest in seeing whether anything could be done about Uber's presence in the market. He could have read the DL had he been interested in it – the DL was sent to Mr White by the LTDA, with whom Mr O'Connor discussed matters – but it appears he had no interest in doing so. He did not obtain actual knowledge sufficient to allow the pleading of the claim against Uber that has now been brought, but that was because of his particular lack of interest in whether there might be any such claim, and his general disinterest in exploring the matter further. I should add, however, that there was nothing to suggest that his attitude, and in particular his lack of interest and curiosity in whether there might be some sort of a claim, was typical among cab drivers.

Mr O'Regan

160. Mr O'Regan, by contrast, took an active interest in issues affecting the black cab trade generally, including matters relating to Uber. Mr O'Regan continues to work as a black cab driver, as he has done for 30 years, working both days and nights. He was, and is, a committee member of the LCDC.

161. He was aware of Uber's entry into the London market and he agreed that the entry of Uber into the market was a "*major concern*" for cab drivers. He confirmed it was a

"pretty regular topic of conversation" between cab drivers. Mr O'Regan left the LTDA because he did not believe they were doing enough about Uber. He then became a committee member for the LCDC at around the end of 2015 or start of 2016.

162. He read the Clifford Chance letter to TfL in about 2016, and he accepted it contained some of the same concerns that he had about Uber. One of his issues at the time was what he perceived as the lack of action taken by TfL as a regulator. He said that the LCDC's opinion at that time was that there was political pressure on TfL to "*welcome [Uber] through the door.*" He thought that, by 2016, TfL should have been aware that Uber was acting unlawfully and done something about it.

163. Mr O'Regan said that from about 2015/2016 he and the LCDC had suspicions about Uber. He said, based on what could be understood about the Uber model, as a matter of common sense it was clear that it was the driver accepting the booking. He emphasised this was not based on any inside knowledge: "*Any driver, any member, TfL, any lawyer could have come to the same conclusion.*" He said he asked TfL about this at various meetings, but that TfL would not say what they were going to do: "*They just say, "Thanks noted" and that's it.*" However, his view that Uber's operating model was unlawful was clear, and in May 2017 he emailed journalists at the Daily Mail and LBC stating his view that it was the drivers that accepted the bookings rather than the operator.

164. Mr O'Regan also read the Black Affidavit from the *City of Toronto* case, and Ms Bertram's statement from the *Aslam* proceedings, and was party to a number of communications in which others expressed the view that these affidavits had exposed Uber's prior misstatements. He also read the articles about Greyball when they were published, and knew that Greyball had been referred to in *The Badge* in support of a contention that Uber London was not fit and proper to hold a licence.

165. He confirmed that he saw the DL after it was published by the LTDA on 20 December 2017, recalling that he was likely to have seen it "*just after Christmas*", and he read it, understanding that TfL had refused Uber London's licence because Uber had made misleading statements and as a result of Greyball. He understood that it was the misleading of TfL that was key, as opposed to the booking system by itself, explaining: "*Yes, you know, it was centred around the bookings, you know, the misleading aspects, the honesty part of the act, you know, the fitness and propriety, dishonesty of, you know, misleading, yes . We didn't take it that it was the bookings what were the reason. It was the -- you know, the -- misleading was the --…*"

166. In short, before he read the DL, he believed that Uber's operations were unlawful because the drivers accepted the bookings in their car, that Uber must have mislead TfL in relating to their booking process, and that Uber was not a fit and proper person to hold a licence given their access to technology that could be used to evade regulatory scrutiny (namely, Greyball). Those matters were confirmed for him when he read the DL. He also confirmed that he knew about the allegations relating to Ripley and the kill-switch when they were first made in January 2018. In light of my decisions earlier in this judgment concerning what was sufficient to know in order to plead the claims, it is clear that Mr O'Regan had sufficient knowledge and understanding of the facts for the purposes of s.32 without needing to read the evidence in the licensing appeal and the Chief Magistrate's judgment.

Mr Peters

167. Mr Peters was more sophisticated in terms of his business acumen than the other two witnesses, and had previously worked in the financial markets before moving into the mini cab industry in 2007. Occasionally he was a somewhat argumentative witness.

168. He followed the Uber story closely because he could feel Uber's impact "every day" on his business – he believed Uber was causing his business financial harm from 2014. One of his complaints was that in the Uber app as it was at the time, there was no need for the rider to enter a destination when booking, which he saw a fundamentally different to how minicab bookings took place. He also believed that the Uber bookings were offered directly to drivers. He had worked to build his businesses and had initially been impressed with the thoroughness with which TfL audited them, but his confidence in TfL was lost when he saw that they did nothing about Uber.

169. It was clear that he generally took a dim view of Uber. I have already referred to his view that he believed that Uber would do whatever it took to succeed, including by disregarding legal requirements if they needed to do so.

170. When the TfL decision not to renew Uber's licence was announced, he used the opportunity to gain publicity for his complaints, and he was interviewed by Sky News, as well as writing an open letter to the Mayor of London. In his Sky News interview, he referred to Uber having "*skirted the rules*" and that it was a surprise that it had taken so long for "*some firm action to be taken*." He confirmed in his oral evidence that he believed that Uber was not "*complying with the regulations*" for a number of years. In his letter to the Mayor, he highlighted Uber's use of Greyball – "*… to put it simply, [it] is designed with the sole purpose of confusing and avoiding regulators*" – and referred to Uber's "*strategy of not playing by the rules.*"

171. He read the DL at around the time that it was published, though in his oral evidence sought to downplay it by saying that the DL had no real impact because Uber did not stop operating. Mr Peters heard about the allegations relating to Greyball when they were published in the *Financial Times*, and he also followed the other articles on the same topic. As he explained in his oral evidence: "*Most of the major news on Uber I would probably have heard.*" He said that he found the "*whole thing so crazy*" and referred to it as "*bonkers that someone would create software to conceal items from a regulator.*" He also confirmed he had read about the Ripley allegations when they were reported in the press.

172. In summary, he took a close interest in what Uber was doing, he knew about the Greyball allegations, and the content of the DL (which no doubt confirmed his view that bookings went direct to drivers), and he believed Uber was not complying with the relevant rules and regulations. Like Mr O'Regan, Mr Peters had sufficient knowledge and understanding of the facts for the purposes of s.32 without needing to read the evidence in the licensing appeal and the Chief Magistrate's judgment.

Conclusion

173. As I have set out above, the issue identified to be determined as a preliminary issue is:

> "Did the Claimants discover, or could the Claimants with reasonable diligence have discovered, the alleged fraud and/or deliberate concealment only after 25 or 26 June 2018?"

174. In light of the conclusions I have reached above, the answer to that is "no". They could have discovered it earlier, and more than 6 years before the first of the claim forms was issued. As a result, the claimants' claims are time-barred.