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Case No: CO/1449/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/10/2015

Before :

MR JUSTICE OUSELEY

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Between :

TRANSPORT FOR LONDON	**Claimant**
- and -	
UBER LONDON LIMITED	**First Defendant**
LICENSED TAXI DRIVERS ASSOCIATION	**Second Defendant**
LICENSED PRIVATE HIRE CAR ASSOCIATION	**Third Defendant**

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Martin Chamberlain Q.C. and Tim Johnston (instructed by **Transport for London**) for the **Claimant**
Monica Carss-Frisk Q.C. (instructed by **Hogan Lovells International LLP**) for the **First Defendant**
Martin Westgate Q.C. (instructed by **Michael Demidecki & Co**) for the **Second Defendant**
Pushpinder Saini Q.C. (instructed by **Latham and Watkins (London) LLP**) for the **Third Defendant**

Hearing date: 5th October

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Approved Judgment

MR JUSTICE OUSELEY :

1. In May 2012, Transport for London, TfL, licensed the first Defendant, Uber London Ltd, Uber, as a private hire vehicle operator in London. The vehicles operating within the Uber network include licensed private hire vehicles, PHVs, but they also include black cabs. The second Defendant, the Licensed Taxi Drivers' Association, LTDA, is an association representing licensed hackney carriage drivers, the London black cabs; the third Defendant, the Licensed Private Hire Car Association, LPHCA, is an association representing Licensed taxi and private hire vehicle operators. It is an offence under s11 of the Private Hire Vehicles (London) Act 1998 for a licensed PHV to be equipped with a taximeter, that is, a device for calculating the fare to be charged for any journey. The LTDA and LPHCA contend that private hire vehicles operating within the Uber network are equipped with taximeters, in contravention of the criminal law. TfL and Uber disagree.

2. A private prosecution to test the matter was initiated by the LTDA. Those proceedings were adjourned by Senior District Judge Riddle in November 2014 for the issue, which is one of statutory construction, to be resolved by civil proceedings for a declaration in the Administrative Court. This route became possible when the criminal proceedings were withdrawn in February 2015. All parties are now agreed that a declaration under the CPR 40.20 would be appropriate, notwithstanding that it would resolve an issue which arises in a criminal context. I am prepared to grant a declaration resolving the issue and will give short reasons for that at the end of my judgment on the issue of statutory construction. TfL, as the relevant regulator, seeks a declaration, with the support of Uber, that the Uber network PHVs are not equipped with a taximeter. The LTDA and LPHCA, contend that they are. Although disagreeing with their case, TfL does not regard it as unarguable, and needs the issue resolved.

The legislative provisions

3. TfL is the regulator for both private hire vehicles and for hackney carriages in London. Licensing of private hire vehicles was introduced in London by the Private Hire Vehicles (London) Act 1998, the Act. This Act provides for the licensing of operators of PHVs, the licensing of the vehicles themselves and for the licensing of the drivers of such vehicles. A private hire booking can only be accepted in London by someone who holds a private hire vehicle operator's licence; section 2. Section 7(2)(a) requires TfL to be satisfied that a vehicle for which a London PHV licence is sought:

> "(i) is suitable in type, size and design for use as a private hire vehicle-
>
> (ii) is safe, comfortable and in a suitable mechanical condition for that use; and
>
> (iii) is not of such design and appearance as would lead any person to believe that the vehicle is a London cab…."

4. Section 8 places obligations on the owners of licensed vehicles. These include the presentation of the vehicle for inspecting and testing as reasonably required, which may be up to three times in a 12 month period.

5. Section 11 is at the heart of the debate. It provides:

> "(1) No vehicle to which a London PHV licence relates shall be equipped with a taximeter.
>
> (2) If such a vehicle is equipped with a taximeter, the owner of that vehicle is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
>
> (3) In this section "taximeter" means a device for calculating the fare to be charged in respect of any journey by reference to the distance travelled or time elapsed since the start of the journey (or a combination of both)."

6. Section 35 provides that the owner of the vehicle "shall be taken to be the person by whom it is kept." That is presumed to be the registered keeper of the vehicle, that is, the person in whose name the vehicle was registered under the Vehicle Excise and Registration Act 1994.

7. I note that notwithstanding the variable ways in which the principal offenders for a number of offences under the 1998 Act are described, sometimes drivers, sometimes operators, and sometimes owners, or a combination, the principal offender in relation to section 11 is the owner of a vehicle rather than either the driver or the operator. It is the vehicle which must be equipped with the device in question. It does not expressly prohibit the driver from using such a device if it is not part of the vehicle's equipment. The device must be a device "for calculating fares". I was told and accept that 40% of Uber's drivers have rented their cars. There is nothing in the Act or regulations which specifies how a PHV driver or operator is to calculate the fares, and in particular there is nothing which prohibits them from using the most obvious inputs, which are distance travelled and time taken. There is no obligation on the operator or driver to provide a quote or estimate, if none is asked for. There is no prohibition on the fare being calculated at the end of the journey.

8. The Act is supplemented by the Private Hire Vehicles London (Operators' Licences Regulation) 2000 SI 2000 3146 which requires particulars of bookings to be entered by the operator in his records including any fare or estimated fare.

9. PHVs outside London are regulated under the Local Government (Miscellaneous Provisions) Act 1976 in the areas to which its controls have been applied. It is the basis for the provisions of the 1998 Act. By s71, nothing requires a PHV to be equipped with a taximeter, defined as in the 1998 Act, but if it is, the taximeter must be tested and approved by the regulator. The London legislation is notably different in that respect.

10. TfL regulates hackney carriages, the London black cabs, under the Metropolitan Public Carriage Act 1869, the London Cab and Stage Carriage Act 1907 and the London Cab Order 1934 subject to various amendments. I was referred by Mr

Chamberlain QC for TfL and Ms Carss-Frisk QC for Uber to Article 35 of the 1934 Order which requires the owner of every taxi to cause it to be fitted with a taximeter of a type approved by TfL and prescribes the way in which the meter is to be constructed and operated. There have been directives from the EEC/EU dealing with the characteristics of taximeters since 1979, now given effect in the Measuring Instruments (Taximeters) Regulations SI 2006 No. 2304 implementing the most recent EU Directive. These define a taximeter as:

> "a device that works together with the signal generator to make a measuring instrument; with the device measuring duration, calculating distance on the basis of a signal delivered by the distance signal generators; and calculating and displaying the fare to be paid for a trip on the basis of the calculated distance or the measured duration of the trip, or of both."

The facts

11. These are not in dispute. I take them largely from Ms Carss- Frisk QC's Skeleton Argument, which is supported by Uber's evidence. Uber signs up both licensed private hire vehicle drivers and licensed black cab drivers who are then able to carry out the bookings accepted and referred to them by Uber. The booking and customer billing process involves the customer using the Customer App and the Driver using the Driver App; both Apps licensed by an Uber related company. The Driver App has to be installed on the driver's Smartphone, either rented from Uber or the driver's own Smartphone. A driver using his own Smartphone can use it for the range of other purposes for which a Smartphone can be used. Smartphones rented from Uber however are disabled from making calls or sending text messages and allow only access to the Driver App and other relevant applications such as the navigation App. Those who rent the Smartphone are supplied with a phone cradle for the vehicle but are not required to use it. The driver can keep the Smartphone where they want to during the trip. The Smartphone does not have to be visible to the customer at any time. The customer obtains the Customer App by registering certain personal details with Uber and providing a valid credit or debit card number. Once registered, the customer can use the Customer App.

12. When booking, the customer can choose a particular type of vehicle. The nearest vehicle of that type available for hire will be shown on the Smartphone screen. The customer then indicates precisely where they want to be picked up, and clicks "request" to make the booking. Uber accepts the booking and Uber's servers in the United States locate the nearest available vehicle of the type requested by the customer. The servers then send the accepted booking to the Smartphone of the nearest driver, who has 15 seconds to accept the booking. If he does not accept it, the server sends the booking to the Smartphone of the driver of the next nearest vehicle to the customer. When the driver takes on the booking, he is sent all the relevant details including the location. He can contact the customer via the Driver App but not via the customer's mobile number. The customer is sent also by the Customer App details of the driver, car and estimated time of arrival.

13. Once the driver has picked up the customer, the customer, if he has not already done so, provides the driver with details of the desired destination. The driver puts this on to his Smartphone and clicks the "begin trip" icon on his Driver App screen. If the car

hired is a black cab rather than a private hire vehicle, the driver clicks on the icon and starts his taximeter simultaneously. If the Customer App is left open during the trip, the customer will see the name and photograph of the driver on the Smartphone screen as well as the intended route and estimated time of arrival. The customer cannot see the fare during the trip and no running fare is displayed on their Smartphone or that of the driver. But if they are in a black cab booked through Uber, they can see the taximeter with the fare running in the usual way.

14. At the end of the trip the driver presses the "end trip" button on the Driver App screen on his Smartphone. If the vehicle is a black cab, the driver will be prompted to enter the fare shown on the taximeter on his Smartphone through the Driver App. That is the fare. However if the vehicle is a private hire vehicle the fare is calculated by Uber's servers, to which I shall come. The fare is not calculated and displayed on a running basis, as with a black cab taximeter. The customer will be sent a fare receipt by email within seconds of the trip ending. The receipt shows the total fare charged, a map of the route, distance travelled and time taken. It provides a breakdown of the fare showing the costs of the trip, the base fare, distance and time. The fare is automatically charged to the credit or debit card of the customer. The information about the total fare charged is sent by Uber's service to the driver on the Driver App at the same time as the customer receives his receipt. There are ways in which issue can be taken by the customer with the fare charged in this way.

15. The issue in this case relates to how the fare is calculated for PHVs on the Uber network, and not to black cabs on it. The calculation is carried out by one of two servers operated by Uber in the United States. Signals are sent to the servers by the driver's Smartphone, providing GPS data from the driver's Smartphone, and time details. Server 2 calculates the fare to be paid using what Uber calls its fare calculation model, effectively a software based algorithm. Server 2 determines which fare structure applies, in this case the London fare structure. It obtains the structure from the fare structure in Server 1 which keeps the long term data for Uber. In London there is a base fare and an additional fare. The base fare depends on the type of PHV used. The additional fare is calculated by adding the total time taken to complete the trip at a particular amount per minute depending on the vehicle plus the total distance travelled charged at a particular amount per mile also varying with the type of vehicle. There may be a further component to the additional fare depending on whether "surge pricing" is in operation, to which the customer is alerted in advance. If so, a multiplier is applied to the additional fare. Surge pricing applies and it may apply for a very short period only, a matter of minutes sometimes, so that higher prices are charged during times of high demand for drivers; the aim is to encourage more drivers to be available at particular places. Any further tolls such as airport car parking are added, promotional offers are assessed and where applicable the fare reduced accordingly. Some fares are charged at a flat rate such as trips to the London airports. It is then for the server to send its calculated final fare to the customer and private hire driver simultaneously. No fare can be calculated during a network outage.

16. A black cab fare also comprises a base fare with an additional fare calculated using distance and time but these metrics are recorded by the taximeter which is integrated and sealed into the mechanics of the black cab and the calculation is performed by the taximeter as the journey progresses.

The issue

17. The question for decision in the light of those agreed facts is whether the Uber PHVs are equipped with a taximeter, that is, a device for calculating fares. In my judgment, these PHVs are not equipped with a taximeter as defined by section 11(3). The driver's Smartphone with the Driver's App is not a device for calculating fares by itself or in conjunction with Server 2, and even if it were, the vehicle is not equipped with it. I reach that conclusion as a matter of the ordinary meaning of the words as applied to the agreed facts.

"Device for calculating fares"

18. The driver's Smartphone was the primary candidate device for calculating fares. Server 2 receives inputs from the driver's Smartphone, and elsewhere. The results of the calculation are transmitted to the driver and customer via their Uber APPs and to the third party which debits the customer's account. But the Smartphone carries out no calculations; that is not its purpose. The calculation is carried out in fact by Server 2 and wherever it actually does it, it is not in the vehicle.

19. LTDA and LPHCA argue that the driver's Smartphone provides inputs to the calculation in the form of time and distance for the journey, which is correct. They argue that that suffices to make the Smartphone a device for calculating fares. Any involvement in the process of calculation was sufficient to constitute the Smartphone such a device. That is wrong.

20. A device for recording time and distance is not a device for calculating a fare based on time and distance, let alone one based on more than that, including the fare structure itself, a necessary component to the calculation. The language of the statute is quite clear. The essence of a taximeter for the purpose of section 11 is that the device must be for the calculation of the fare then to be charged, based on whatever inputs are appropriate. Such a device is not simply recording and transmitting some or all of the inputs to a calculation made elsewhere, or receiving the output, that is the calculated fare. The Smartphone is not a "thing designed or adapted for a particular functional purpose" namely calculating fares for the PHV; see the Shorter OED. It is not a taximeter. The Smartphone with its Driver's App may be essential to enabling the calculation to take place but that does not make it a device for calculating fares. Nor does that warrant treating the Smartphone as part of a single device with Server 2; it simply is not.

21. Mr Westgate QC for the LTDA contended that the recording and transmission of time and distance information, essential for the calculation of fares, to a calculator external to the PHV, meant that the recording and transmission devices were devices for the calculation of fares. They were involved in the calculation of fares because they provide inputs for the calculation to be made. That however does not pay sufficient attention to the statutory language, which could readily have been broader if that approach were intended. And there would be very adverse consequences were it adopted to which Mr Westgate had no real answer. How would this contention operate in practice? Could a non-Uber PHV driver use inputs derived from the odometer and clock, with which all vehicles are equipped, to provide by mobile phone or the increasingly common Smartphone, by voice or text, or internet, the time and distance data for the journey as inputs for an operator, who would perform a calculation mentally or manually, or with a table, or with a calculator or computer with a piece of simple software? Even the first would turn the odometer and clock

into devices for the calculation of fares with which the vehicle was equipped, and make the use of the vehicle unlawful for the purpose of s11.

22. Mr Westgate submitted that if a SatNav device were used to help the driver find the route, but it also gave the distance travelled, it would not be a device "for calculating fares" since that meant a device specially created or adapted for that purpose; the Smartphone was specially adapted by the addition of the Driver's App "expressly for the purpose of generating the fare". A Smartphone is not a device for calculating fares even with the Driver's App; this makes it a device for obtaining fare-related inputs, transmitting them, and receiving the calculation back. "Generation" in this context simply avoids the problem created by the clear word "calculating" in the Act.

23. Mr Westgate's submissions would throw very serious real doubt over the lawfulness of such obvious ways in which the PHV driver or operator may now carry out the necessary tasks of calculating the fares. They cannot be right. This could not be regarded as a set of hypothetical situations to be resolved on a case by case basis. No declaration in his favour could be founded on such a submission.

24. In reality as Mr Chamberlain QC for TfL pointed out, once it is acknowledged that PHV operators are entitled to charge by reference to time and distance, and by reference to anything else such as a base fare, some calculation has to take place using inputs of time and distance at the journey's end. There is no legal difference between what Uber does, and mobile or Smartphone contact between driver and operator for the latter to calculate the fare, by whatever means he chooses, using odometer or SatNav inputs from the driver. Indeed there is no reason why such a calculation should not be done in the vehicle, and a device may be used for that purpose so long as it is not one with which the vehicle itself is equipped.

25. Mr Westgate and Mr Saini then contended that the purpose of s11 was to prevent PHVs using devices which would present the fare as having been automatically calculated by reference to time or distance. This would cover devices which were self-contained as well as those relying on an external signal. The real similarity between what Uber did and what the black cab taximeter did was in the automatic nature of the process and outcome of fare calculation. It was the automatic nature of what was done which was objectionable to the purpose of the Act, and which distinguished the Uber system from the more mundane, less technologically advanced, ways in which other PHV operators might calculate fares. Mr Saini emphasised the importance of consumer protection which he said would be diminished by the use of an automatic remote calculation producing a receipt such as Uber produced. This receipt would give the impression of objectivity in calculation, authority and reliability, even that it involved a regulated fare. Some drivers might claim that the fare was the product of what they might wrongly state was a taximeter, or even have some mock up of a taximeter to pretend the fare had been calculated using it. All that would be contrary to the purpose of the Act.

26. I cannot accept these contentions. I do not know what wording they say should be read into the Act, albeit by way only of illustration or analysis, to express the prohibition on an automatic device, nor whether this prohibition would extend, beyond the actual calculator, to the devices which provided basic input data on the journey's distance and time, or to the means whereby that data was transmitted and received. Mr Westgate did not provide any wording. It is a vague concept, not a

purposive interpretation. The insertion of the word "automatic" before "device" to reflect the concept could even damage the case for the LTDA and LPHCA: a taximeter does the calculation automatically from inputs received automatically from the vehicle once the taxi flag goes down until journey's end. The insert of "automatic" could narrow the scope of the prohibited "device", by requiring it to be more automatic than is the case with Uber's system. It is also difficult to see what wording could express Mr Saini's point that the receipt should not look authoritative and as if the fare had not been calculated by a computer, but by some slower or less reliable means.

27. These submissions are no more than an attempt, without clarity of wording or thinking, to devise something which will cause the Uber system to fall foul of s11, in the name of a purposive interpretation. It would also not avoid the problems to which I have already referred, problems of a very considerable scale, for any driver or operator using devices with which almost all cars are equipped, and sending the basic information to the operator which any PHV operator would need for calculating fares accurately and quickly. Would the use of a calculator fall foul of his interpretation, whereas mental arithmetic might not? Would any degree of automation in the process fall foul of their approach? This, incidentally, also highlights the problem faced by the owner, criminally liable for a breach of s11, in circumstances where the method of calculation may cause him to breach the section's prohibition.

28. The legislative purposes are not advanced by these contentions or harmed by those of TfL and Uber. The purpose of the Act was to bring the hitherto unlicensed mini-cab trade in London within a licensed framework, to protect the public using the services of mini-cabs from a variety of mischiefs including unfitness of the driver, the safety of the vehicle, and the absence of insurance. It was also concerned that licensing mini-cabs should not lead the public to suppose that mini-cabs or PHVs were or were equivalent to black cabs. That much is deducible from the various provisions of the Act itself. The obligations for black cab drivers on taking passengers are regulated; they alone may ply for hire, use taxi ranks and special lanes, and, unlike PHV drivers, are obliged to pass a test on their knowledge of the road network. The fares are regulated and calculated automatically and visibly to the passenger as the journey progresses, through taximeters approved by TfL as complying with strict regulations.

29. The Uber PHV drivers cannot obtain for themselves the advantages which a consumer can choose to enjoy by using a black cab. Section 7 of the 1998 Act prevents the design or appearance of a PHV misleading the public into thinking that it is a black cab. This was not said to be breached by the Uber system, whatever an individual driver might say or misunderstand the system to be. The Uber system of calculation does not involve or enable the use of prohibited inputs or a prohibited form of calculation, or inputs exclusively available to a black cab; it does not use a taximeter as associated with a black cab. There is nothing in the Act, the purpose of which was to protect the public, to suggest that the mini-cab passenger was not to enjoy any improvement which technology, for all its unregulated imperfections, might bring in the speed and accuracy of their fare calculations, and breakdown of the bill, so long as the fare was not calculated by a taximeter, broadly defined. I cannot see what consumer protection purpose there can be in preventing the passenger knowing the fare swiftly at journey's end, and that it was not just an amount the driver thought up, or which the operator thought he could get away with, and instead represented an

automatic calculation, explained by reference to objectively verifiable data, and a fare structure which they might have been able to read on the operator's website- even if the driver's ignorance meant that the route had been longer or slower than it needed to be, and his measuring devices were untested and to a degree unreliable. Mr Saini's consumer protection submission on behalf of his client was odd indeed.

30. I do not regard the prospect of fake taximeters, against which s7 and other regulatory or criminal law provisions might be brought into play, as any sort of basis for giving the Act a meaning which the ordinary words did not bear in the name of supporting its purpose. I am not clear that an operator or driver using one would be fit for licensing, and I imagine that the LPHCA would agree.

31. I did not find citations from Hansard especially of those who are not the promoters of the Bill, to give any real assistance on the purposive construction of the Act. I am by no means clear that the citations did not cross the line, drawn in *Presidential Insurance Co Ltd v Resha St Hill* [2002] UKPC 33 at [23], from explaining the mischief which the Act was intended to meet, into explaining the reason for particular aspects of the licensing regime; this might or might not explain the mischief to which the Act was directed.

32. I agree with Mr Westgate that no assistance is to be gained from the wording of the regulations prescribing what a taximeter must be for use in black cabs. "Taximeter" in section 11 has its own and quite general definition. It is not confined to a taximeter which has the capabilities of one required for a black cab. The regulations defining taximeter in relation to black cabs specify what the taximeter must be when it is required to be fitted, and not to define a taximeter when it is prohibited. That is the function of section 11 and it is very different. The width of the definition in section 11 is intended to catch all devices used for the calculation of fares.

33. Mr Saini contended that if the Uber system was outside the prohibition in section 11 on its ordinary meaning, the section should be given an "always speaking" or "updating" meaning to cover changes in technology. As was agreed, the changes brought about by the arrival of Google, the Smartphone equipped with accurate civilian use GPS, mobile internet access and in-car navigation systems, would not have been within the contemplation of Parliament in 1998. The principal authority relied on was *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 AC 687. The fundamental basis for the decision was that on a purposive construction, the Human Fertilisation and Embryology Act 1990 protected live human embryos, and the words which suggested it only applied to those which had human life given by fertilisation were words of description and not words of exclusive definition. Lord Bingham said [14]:

> "Can Parliament have been intending to distinguish between live human embryos produced by fertilisation of a female egg and live human embryos produced without such fertilisation? The answer must certainly be negative, since Parliament was unaware that the latter alternative was physically possible. This suggests that the four words were not intended to form an integral part of the definition of embryo but were directed to the time at which it should be treated as such."

34. There is no equivalent argument available here, however. The words of section 11 do not contain some limitation which reflects the understanding of technology of the time, whether or not they are of the essence of the definitions used.

35. The House of Lords went on then consider the nature of an updating interpretation. At [15] he said this:

> "While it is impermissible to ask what Parliament would have done if the facts had been before it, there is one important question which may permissibly be asked: it is whether Parliament, faced with the taxing task of enacting a legislative solution to the difficult religious, moral and scientific issues mentioned above, could rationally have intended to leave live human embryos created by CNR outside the scope of regulation had it known of them as a scientific possibility. There is only one possible answer to this question and it is negative."

36. Lord Steyn [23] noted that Acts were generally to be construed as "always speaking" unless they were in an exceptional category dealing with a particular problem. Otherwise the court was free to apply the meaning of the statute to the present day conditions. Lord Steyn specifically adopted [24] the approach of Lord Wilberforce in *Royal College of Nursing v Department for Health and Social Security* [1981] AC 800:

> "Leaving aside cases of omission by inadvertence, this being not such a case, when a new state of affairs, or a fresh set of facts bearing on policy, comes into existence, the courts have to consider whether they fall within the Parliamentary intention. *They may be held to do so, if they fall within the same genus of facts as those to which the expressed policy has been formulated. They may also be held to do so if there can be detected a clear purpose in the legislation which can only be fulfilled if the extension is made.*"

37. Lord Steyn also confirmed that this approach did not require the wording in the Act generally to be ambiguous; it was a benign principle to hold that the wording of the Act covered a scientific development not known when the Act was passed since Parliament would have intended that statutes would be in place, effective for many years.

38. This argument is all very well in principle, but I cannot see how, in its application here, it advances the case for the LTDA or LPHCA. The language of section 11 does not depend for its prohibition on the understanding of the technology of 1998: it is quite general and capable of its application to any form of modern technology. If the Smartphone was part of the vehicle's equipment and carried out the calculation with inputs received over the internet, the Act would apply to it. The question of where the calculation is carried out and by what is at the heart of the issue in view of the language chosen by Parliament. The technique by which the information is given and received and by which the calculation is performed and where is not. The changing technical capabilities have not altered the way in which the Act works. Parliament always recognised that the act of calculation could be carried out by a device using inputs from the car but not in the car. That has not changed merely because another

means of doing that has been found. An updating interpretation looking to what the Act was aimed at would not cover the position in the way contended for by LTDA and LPHCA.

39. In reality, the sort of interpretation which they seek is not one to deal with unanticipated new technology but with an unanticipated new way of operating licensed mini-cabs, using new technology at booking, for the journey and in fare calculation and payment. There are all sorts of issues which this may give rise to and a good deal of debate. But this is not an issue capable of resolution by some updating interpretation of s11. It is impossible to know how Parliament would have dealt with Uber had it existed in 1998, or even now.

40. It is also difficult to see what words could be added to cover the Uber system's operation which did not fundamentally alter the concepts of whether the PHV was equipped with a device and what the device was for, without bringing within the ambit of the criminal law the more common means whereby PHV fares are calculated. I received no remotely persuasive answer on that point.

41. I was also presented with the argument that the court should lean towards TfL and Uber's arguments because of the principle that in doubtful cases penal legislation should be given that interpretation which was least unfavourable to the accused; the principle against doubtful penalisation. But as was pointed out by Lord Reid in *DPP v Ottewell* [1970] AC 642, at 649 D, this principle only applies where after full enquiry and consideration one is left in real doubt. It is not enough that the language is capable of having two meanings. If the court is satisfied as to what Parliament must have intended, then the principle does not prevent that interpretation being applied.

42. Here, not merely is the Act not uncertain in meaning so as to attract the invocation of that principle in favour of TfL; the Act is quite clear albeit that in my judgment it favours TfL and Uber. More troubling would be the array of uncertainties in the application which the construction contended for by the LTDA and LPHCA would unavoidably create. An interpretation which threw common business methods of operation into real doubt, and which had been used untroubled by the law for well over a decade would be quite alarming. It is this which would require the clearest words and those are simply not present here.

43. I did not find Mr Saini's attempted analogy with tax cases persuasive at all: he likened the step of sending the information to Server 2 in the US to a step in a tax avoidance scheme, a step which had legal effect but no commercial purpose and so judging the scheme as a whole, it could not achieve what it needed to be. The device should therefore be regarded as a device for calculating fares and the vehicle as being equipped with it.

44. The analogy suffers from rather more than the imperfections of all analogies. The transmitting of inputs to Server 2 is not a commercially pointless step simply there to avoid the Smartphone being a taximeter. Whether or not the Smartphone actually has the capacity to do the calculation if fed all of the inputs, it is simply a legitimate method of using technology for Uber to use Server 2 to undertake that function, where it has access to the calculation software including the data from Server 1, and the means of calculation is taken out of the driver's hands. The Smartphone performs other functions as well, even if hired from Uber. Besides if the step, pursuing the

analogy, were legally effective, his approach would clash with the principle against doubtful penalisation.

Are the PHVs equipped with a device for calculating fares?

45. On the second aspect of s11, I have concluded that the Uber PHV is not equipped with the driver's Smartphone, whether the Smartphone is hired from Uber or is the driver's own. Of course the driver needs to have the Smartphone with him in the vehicle for the calculating and charging system to work but that does not mean that the vehicle is equipped with it. It is the driver who is equipped with it. The vehicle is not equipped with something that may stay in the driver's pocket, be put in multiple places over one journey, or be moved in and out of the car with the driver, and at best may rest on the cradle.

46. "Equipped" may cover many degrees of removability and attachment. Whether a vehicle is "equipped" with a device is a matter of impression, but it would stretch a broad word too far to hold that the PHV was "equipped" with a Smartphone in this context and in these circumstances. "Equipped" focuses on what the vehicle is provided with and not what the driver brings in and uses. The Act does not prohibit the driver from carrying and using a device for fare calculation nor prohibit him from providing information via a device in order for the fares to be calculated elsewhere.

47. The importance of the focus on equipping the vehicle is supported by the fact that the principal offender under section 11 is the owner of the vehicle and not the driver; so the statutory focus is on something which the owner might be expected to have knowledge or control over rather than the driver, in line with his responsibilities under ss7 and 8. The owner who seeks to license the vehicle must present the vehicle for inspection in the state in which its design and appearance "must not lead any person to believe" that it was a London cab, and it must be suitable in design for such a use. Neither is likely to be satisfied if the vehicle is equipped with a device for calculating fares, a taxi meter. This does not mean that the device has to be physically integrated with and sealed into the vehicle as with a black cab taximeter. It would also be strange if Parliament had made the owner responsible for a device carried by the driver, and for a method of fare calculation of which he might be wholly ignorant and over which he might have no means of control. This is not a perfect guide because of other liabilities to which the owner is subject under the Act and hackney carriage legislation, but it is a useful pointer.

The grant of a declaration

48. All parties also accepted that it was for the Court to decide if a declaration should be granted. There was no disagreement about the appropriateness of seeking a declaration on this issue. The Senior District Judge had adjourned criminal proceedings in the hope that the issue of statutory construction would be resolved in the civil courts and the bar to that course of action created by continued criminal proceedings has been removed with the withdrawal of those proceedings. There is a clear dispute on an issue of statutory construction which arises on facts which are agreed and sufficiently specific and detailed for the resolution of the issue. The issue is not a theoretical one as to future conduct which may or may not be undertaken. The Uber system is in use and will continue unless declared unlawful because the regulator regards it as lawful. TfL regards there as being a degree of uncertainty

which requires resolution; litigation is not unnecessary as it was in *R (Rusbridger) v Attorney General* [2003] UKHL 38, [2004] 1 AC 357. The issue is of importance because of the use by Uber of the system of fare calculation and TfL as regulator needs to know whether its view of the law, that offences are not being committed against s11 is correct, so that it should be prosecuting the owners of Uber vehicles for offences contrary to s11. This is not a case in which a declaration is being sought by the regulator that certain conduct is criminal. These are regulatory offences and although the claim is not brought by or at the suit of the Attorney General, TfL is the regulatory body with responsibility for prosecutions. There are no current criminal proceedings. I am persuaded that the exceptional course of dealing with the issue by way of declaration is the right course in the circumstances. I have borne in mind the propositions of Walker J, correct as they seem to me to be, in *R v Haynes v Stafford BC* [2006] EWHC 136 (Admin), [2007] 1 WLR 1365.

Declaration

49. Accordingly, subject to any submission from Counsel, I make the declaration below, and no order as to costs.

> *A taximeter, for the purposes of Section 11 of the Private Hire Vehicles (London) Act 1998, does not include a device that receives GPS signals in the course of a journey, and forwards GPS data to a server located outside of the vehicle, which server calculates a fare that is partially or wholly determined by reference to distance travelled and time taken, and sends the fare information back to the device.*

50. No declaration on "equipped" seems to me to be necessary or readily framed. I have set out my view.