

Private Hire Operators: Are Your Private Hire Drivers ‘Workers’?



by Neil Morley

On 19th February 2021 the Supreme Court delivered its judgement in the matter of Uber BV & Others v Aslam & Others [2021] UKSC 5.

The Court was primarily asked to determine whether private hire drivers engaged by Uber should be classified as ‘workers’ within the meaning of the *Employment Rights Act 1996*, *National Minimum Wage Act 1998* and *Working Time Regulations 1998*. Lord Leggatt, in giving judgement, agreed the drivers should be afforded ‘worker’ status and entitlement to holiday pay, the national minimum wage and other protections. In doing so, Uber’s appeal from decisions in the Employment Tribunal, Employment Appeal Tribunal and Court of Appeal were dismissed.

Following wide publicity surrounding this matter, Travis Morley has been contacted by private hire operators with real concerns about the effect and application of this decision. We, as expert legal consultants on Contract Law and Private Hire Licensing Law, will seek to answer some of those questions.

Who does the decision affect?

First, and foremost, only those parties in the case. It does however, indicate the approach of the courts, and tribunals, to similar claims by other private hire drivers against operators.

Okay, so what did the judgement say?

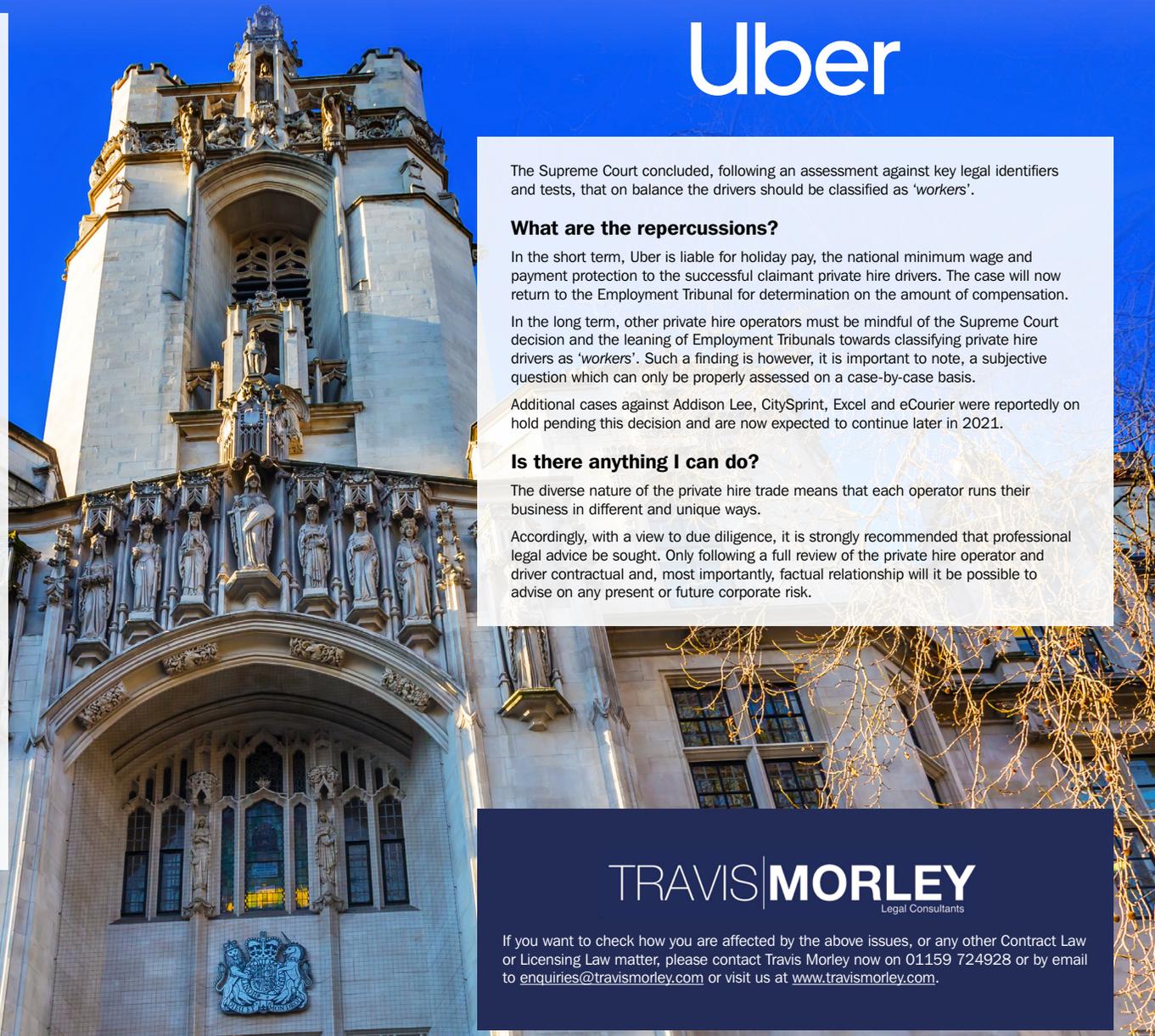
It found, re-affirming an earlier Employment Tribunal decision (*Aslam & Others v Uber BV [2016] EW Misc B68 (ET)* (28 October 2016), the drivers to be within the definition of a ‘worker’ in section 230(3)(b) *Employment Rights Act 1996*. It states:

- “(3) In this Act “worker”...means an individual who has entered into or works under...-
- (a) ...
 - (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

an any reference to a worker’s contract shall be construed accordingly.”

This definition is mirrored in section 54(3) *National Minimum Wage Act 1998* and regulation 2(1) *Working Time Regulations 1998*.

Each side presented its case; Uber contested the drivers were independent contractors citing contractual arrangements whilst the drivers offered contradicting details as to the actual working relationship. Ultimately, the Court recognised the disparity between the opposing submissions and focussed on factual day-to-day interaction. Attention was particularly drawn, by the Court, to an imbalance in the negotiation of remuneration, the imposition of contracts, constraints on accepting or rejecting bookings, controls over service delivery and restrictions on passenger communication.



Uber

The Supreme Court concluded, following an assessment against key legal identifiers and tests, that on balance the drivers should be classified as ‘workers’.

What are the repercussions?

In the short term, Uber is liable for holiday pay, the national minimum wage and payment protection to the successful claimant private hire drivers. The case will now return to the Employment Tribunal for determination on the amount of compensation.

In the long term, other private hire operators must be mindful of the Supreme Court decision and the leaning of Employment Tribunals towards classifying private hire drivers as ‘workers’. Such a finding is however, it is important to note, a subjective question which can only be properly assessed on a case-by-case basis.

Additional cases against Addison Lee, CitySprint, Excel and eCourier were reportedly on hold pending this decision and are now expected to continue later in 2021.

Is there anything I can do?

The diverse nature of the private hire trade means that each operator runs their business in different and unique ways.

Accordingly, with a view to due diligence, it is strongly recommended that professional legal advice be sought. Only following a full review of the private hire operator and driver contractual and, most importantly, factual relationship will it be possible to advise on any present or future corporate risk.

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If you want to check how you are affected by the above issues, or any other Contract Law or Licensing Law matter, please contact Travis Morley now on 01159 724928 or by email to enquiries@travismorley.com or visit us at www.travismorley.com.

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