HIGH COURT JUDGEMENT: THE FREE NOW MOBILE APPLICATION, PRIVATE HIRE DRIVERS & PLYING FOR HIRE

On 6th December 2021 the High Court handed down its decision in the case of *R (United Trade Action Group) v Transport for London & Others [2021] EWHC 3290 (Admin)*.

It had been tasked with hearing a judicial review claim, brought by the United Trade Action Group ("UTAG"), to quash a Transport for London ("TfL") **decision to renew Transopco (UK) Limited's private hire operator licence** on 9th August 2020.

The challenge centred on the use, by Transopco (UK) Limited ("Transopco"), of its **Free Now mobile application** which, as set out in the judgement (at para. 7), raised the question:

"*…whether a driver soliciting passengers by means of the Free Now app (which is in all material respects identical to the Uber app) is **"plying for hire"** within the meaning of the Metropolitan Public Carriage Act 1869…"*

A similar question, in respect of the "Uber app", had already been considered in ***Reading Borough Council v Ali [2019] EWHC (Admin)*** *("Reading")*. On that occasion the High Court found a mobile application did not amount to "plying for hire".

UTAG sought to **contest reliance** on, and the application of, the *Reading* decision. It asserted *Reading* was **wrong** and submitted, amongst others, a number of supporting arguments (at para 50):

"*As a matter of ordinary language, a vehicle plies for hire if it drives around or parks in a public place **waiting for someone** who wants to hire it."*

"*A vehicle whose **location is shown** on the customer's smartphone screen is for all practical purposes exhibited as available for hire…"*

"*…booking via the app for a vehicle which may be less than a minute away is in effect **instantaneous** rather than a prior booking…"*

It was also submitted the *Reading* case should be **distinguished** as "*…unlike Uber…Free Now's User Terms state that the **booking is made between the customer and the driver**…"*(at para. 51).

TfL and **Transopco**, contrarily, **sought to rely** on the *Reading* decision. Each asserted there is "*…**no material difference** in the way that the drivers using the Uber app behaved, compared to those using Free Now, in the same way that there was **no material difference** in the operation of the two apps…"* (at para. 52).

The court, in considering these competing views, concluded "*…the way in which drivers using the Free Now app typically operate **corresponds in all respects** to the findings of fact made…in Reading v Ali…"* (at para. 53). It further stated "*…in our judgement Reading v Ali is in all respects **indistinguishable** from the present case…"* (at para. 54).

Finding **against** UTAG, and **dismissing** the claim, Mr Justice Males and Mr Justice Fraser concluded (at para. 55):

"*It is therefore our **duty to follow Reading v Ali**. We conclude, therefore, that **Free Now does not facilitate or encourage its drivers to ply for hire** and that this **ground for challenge to TfL's decision to grant it an operator's licence must fail**."*

It is understood UTAG plan to **appeal** this decision to further challenge the *Reading* position on use of mobile applications and "plying for hire". Developments in this case will be updated in future editions.

If you want to check how you are affected by any Taxi Licensing Law matters, please contact Travis Morley now on 01159 724928 or email **enquiries@travismorley.com** or visit **www.travismorley.com.**

A legal overview on the Free Now, and "plying for hire", element of the recent conjoined judgement handed down by the High Court. Consideration of the Uber, and passenger contracts, aspect can also be found in this magazine.

About The Author…

Neil Morley is a leading lawyer in Taxi Licensing Law who founded Travis Morley in 2010. He has consulted on national law reforms, government briefs and well-reported High Court cases. His opinions have been widely sought by trade organisations, businesses and individuals. He has been published in the Law Society Gazette and is a regular contributor to Private Hire News.

by Neil Morley