UBER v SEFTON COUNCIL

HIGH COURT JUDGEMENT: CONTRACTUAL RELATIONSHIPS & LGMPA 1976

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On 28th July 2023 the High Court handed down its decision in the case of Uber Britannia Limited v Sefton Metropolitan Borough Council & Others [2023] EWHC 1975 (KB).

It had been tasked with hearing a claim, brought by Uber Britannia Limited ("Uber") for clarification on contractual relationships under the **Local Government (Miscellaneous Provisions) Act 1976**. Uber raised, as outlined in the judgement (at para. 4), the question:

> *"In order to operate lawfully under Part II of the Local Government (Miscellaneous Provisions) Act 1976, is a licensed operator who accepts a booking from a passenger required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking?"*

Effectively, it asks whether or not contractual relationships between operators, drivers and passengers are governed by the statute. The answer to which could have implications for judicial observations, regarding worker rights, by the Supreme Court (**Uber BV v Aslam & Others [2021] UKSC 5**).

A prior High Court judgement, initiated by Uber London Limited, found the **Private Hire Vehicles (London) Act 1998** does govern so in London (**Uber London Limited v Transport for London [2021] EWHC 3290 (Admin)**). Consequently, Uber now sought to clarify the position, under similar legislation, outside London.

In these proceedings, Uber asserted the answer to the question must be **"yes"** and was supported, as intervenors, by Bolt Services UK Limited ("Bolt") and the App Drivers & Couriers Union ("ADCU").

Veezu Holdings Limited ("Veezu") and D.E.L.T.A Merseyside Limited ("Delta"), also intervenors, asserted the answer was **"no"**.

Sefton Metropolitan Borough Council ("Sefton") remained neutral (at para. 5).

Finding in favour of Uber's view, Mrs Justice Foster DBE ruled (at para. 65):

> *"...the question posed is to be answered "yes"*

It followed therefore, in the opinion of the court, that:

> *"...[i]nviting and accepting a booking inevitably in my judgement connote the formation of a contract with the passenger...."* (at para. 75).

The court referenced, in coming to its conclusion, the construction of the statute and, in particular, the wording of certain key provisions. Attention, amongst others, being drawn to **s.56(1)** (at **para. 65**). Comparisons were notably made to the precedent set for London (at **para. 70**):

> *"Given the similarities of context and statutory intention between the two Acts...the findings of the [London] case must read over directly to the present situation."*

Additional consideration was applied to interlinking matters of operating models, market competition and, foremost, public safety (at **paras. 81-85**). The issue of VAT was dismissed as "...irrelevant..." (at **para. 85**).

Such an interpretation now means that licensing authorities, as Transport for London ("TfL") has in London, should ascertain whether private hire operators lawfully comply with this requirement.

Whilst the court notes its decision will render ***"...certain types of service model ...no longer capable of operation under the statute..."*** (at **para. 82**), it is unclear how the task of assessing licence holder compliance is to be administered or enforced. The approach adopted by TfL may, as yet, prove a starting point.

Moving forward, operators should consider whether they can satisfy this obligation. To do so, they will need to be capable of clearly demonstrating upon acceptance of a booking, entrance into a clear contractual relationship with passengers to provide journeys.

A key starting point will be to review existing passenger terms and driver contracts. Ultimately, at this stage, compliance will be a subjective question to be considered, and addressed, by each individual business.

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If you want to check how you are affected by this decision, please contact Travis Morley Law on: 01159 724928 or email: enquiries@travismorley.com

AN ACCOUNTANT'S INITIAL VIEW ON THE TAX IMPLICATIONS OF THE SEFTON CASE

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The judge's ruling explicitly stated that the VAT consequences of changing the operating model were irrelevant to the case. (see para 85 below) This meant that the court's decision did not hinge on potential changes to the VAT obligations of ride-sharing platforms.

This legal victory for Uber emphasises the case was primarily concerned with whether Uber and others, are indeed private hire operators, not tax implications.

Our view is that only HMRC in an individual case or national Government legislation can change the VAT environment, not regulators. So, for the time being carry on with your existing VAT model, however we suggest that everyone should have a well thought out and defendable VAT model as the private hire industry remains under scrutiny.

Further scrutiny may occur in the future, but even after The Sefton case, please do not rush to change anything. A tech company's ride hailing platform is not the traditional private hire model. Let's see what our government has in store for us first.

As for the ruling itself, I feel that private hire operators have always acknowledged at least a 'duty of care' to the passenger, so the move to principal isn't such a big jump. However, it is an interesting use of the word *'principal'* and could be conceived as an attempt to imply tax obligations. There were other words that could have been used such as *"primary"* or *"main"* to avoid the confusion, only time will tell.

To read Uber v Sefton Council: The Accountant's View in full, please visit:

https://eazitax.co.uk/uber-vs-sefton-council-the-accountants-view/

> 85. The VAT consequences for those who will wish to change their operating model are in my judgement irrelevant. They do not condition the reading of the provisions, it could never be said that a change in the taxation position is an absurd consequence the draughtsman could never have contemplated would result and did not intend. It, together with certain postulated economic consequences do not have relevance to the exercise of statutory construction before the Court. Nor indeed, as was canvassed in argument, is it wholly impossible that any consequent change by way of increase to fares because of an element of taxation would necessarily be passed on to the customer.