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Case No: CA-2023-001771
CA-2023-001772

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION
MRS JUSTICE FOSTER DBE
[2023] EWHC 1975 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/07/2024

Before :

LORD JUSTICE LEWISON
LORD JUSTICE LEWIS
and
LADY JUSTICE ELISABETH LAING

Between :

(1) D.E.L.T.A. MERSEYSIDE LIMITED
(2) VEEZU HOLDINGS LIMITED

First Appellant
Second Appellant

- and -

UBER BRITANNIA LIMITED

Respondent

Philip Kolvin KC and Jen Coyne (instructed by **Aaron and Partners LLP**)
for the **First Appellant**
Gerald Gouriet KC and Michael Feeney (instructed by **Capital Law Limited**)
for the **Second Appellant**
Ranjit Bhoose KC and Josef Cannon KC (instructed by **Hogan Lovells International LLP**)
for the **Respondent**

Hearing dates : 09/07/2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 15/07/2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Lewison:

Introduction

1. Private hire vehicles outside London (with the exception of Plymouth) are regulated by Part II of the Local Government (Miscellaneous Provisions) Act 1976 (“the Act”). The issue raised on this appeal is whether an operator (within the meaning of the Act) is required by the Act to enter into a contract as principal with a person who makes a booking for a private hire vehicle.
2. By her order of 28 July 2023 Foster J granted a declaration in the following terms:

“In order to operate lawfully under Part II Local Government (Miscellaneous Provisions) Act 1976, a licensed operator who accepts a booking for a passenger is required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking.”
3. Her judgment explaining her reasoning is at [2023] EWHC 1975 (KB), [2024] 1 WLR 1350.
4. Veezu Holdings Ltd and D.E.L.T.A Merseyside Ltd are two private hire operators. They appeal with the permission of Phillips LJ against the terms of the declaration. The appeal is opposed by Uber Britannia Ltd, a rival operator.

The business models

5. The judge briefly explained the relevant business models. Veezu holds 32 private hire operator licences across 22 local licensing authorities and is understood to be the largest multi-region private hire operator outside London. It described itself as trading in a “traditional private hire” operating manner. Veezu invite and accept bookings for journeys on demand or on a pre-booked basis from the public by telephone, by walk-in trade and, as to the majority, through a smartphone app via a website. Passengers may pay for their fares in cash directly to the licensed driver as well as by card to the driver or to the private hire operator on the mobile app. Veezu offers two types of service, one to corporate account customers and one to non-corporate account customers. In respect of the former, Veezu provides what they describe as “transportation services”, meaning booking, despatching a vehicle, keeping records, managing complaints, etc. For non-corporate account customers it is a booking service but the “transportation services” are provided by the licensed driver. They describe themselves as acting as a “disclosed intermediary” between the driver and the passenger. Their corporate service is often for public sector and non-profit organisations - they provide transportation services for school runs, medical appointments etc and often provide a passenger assistant to accompany a vulnerable passenger.
6. D.E.L.T.A. describe themselves as one of the largest private hire operators in the UK and the leading operator in Merseyside. They take 130,000 bookings each week and have around 1,320 drivers. They hold licences from the local authorities in Sefton, Liverpool, Knowsley and St Helens, as well as in West Lancashire and Wolverhampton.

The model described as operating for D.E.L.T.A. involves a “best endeavours” obligation to passengers. They do not provide the journey itself. From 1976 D.E.L.T.A. were required to be licensed as an operator and use only licensed drivers and vehicles. The core of the business, although parts have become automated, has not changed. D.E.L.T.A. just put a passenger in touch with the driver who undertakes to provide the journey. The passenger and the driver arrange the details of the journey and the fare is paid directly to the driver, who keeps it. The driver pays D.E.L.T.A. a fee called a “settle”.

7. D.E.L.T.A. developed app-based booking for smart phones and describes a change from 1976 of approximately 287,000 bookings to 12 million in 2017. Customers are not required to give a destination, nor need they have an uploaded payment card. No indication of drivers in the vicinity is given because the acceptance of the journey from D.E.L.T.A. is a matter of individual choice of the driver. Once accepted, the D.E.L.T.A. app shows the customer how far away the taxi is. They describe their model as a “booking handling service”.

The regulatory scheme

8. The activities that are regulated by the Act are set out in section 46:

“(1) Except as authorised by this Part of this Act—

(a) no person being the proprietor of any vehicle, not being a hackney carriage or London cab in respect of which a vehicle licence is in force, shall use or permit the same to be used in a controlled district as a private hire vehicle without having for such a vehicle a current licence under section 48 of this Act;

(b) no person shall in a controlled district act as driver of any private hire vehicle without having a current licence under section 51 of this Act;

(c) no person being the proprietor of a private hire vehicle licensed under this Part of this Act shall employ as the driver thereof for the purpose of any hiring any person who does not have a current licence under the said section 51;

(d) no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence under section 55 of this Act;

(e) no person licensed under the said section 55 shall in a controlled district operate any vehicle as a private hire vehicle—

(i) if for the vehicle a current licence under the said section 48 is not in force; or

(ii) if the driver does not have a current licence under the said section 51.”

9. Knowing contravention of this section is a criminal offence.

10. The Act proceeds to deal with what must be licensed. Section 48 deals with the licensing of vehicles. The statutory criteria all relate either to the physical condition of the vehicle or to the fact that it is suitably insured. If licensed, the licensing authority must issue a plate or disc, which must be exhibited on the vehicle. Section 51 deals with the licensing of drivers. The driver must be a fit and proper person, must not be disqualified by immigration status, and must have held a driving licence for at least 12 months. If licensed, the licensing authority must issue a driver's badge which the driver must wear when acting in accordance with his licence.
11. Section 55 deals with the licensing of operators. The word "operator" is not itself defined, but section 80(1) contains relevant definitions as follows:

““operate” means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle;

“operator’s licence” means a licence under section 55 of this Act;

“private hire vehicle” means a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab or tramcar, which is provided for hire with the services of a driver for the purpose of carrying passengers;”

12. Section 55(1) requires the licensing authority to grant an operator’s licence to an applicant, provided that they are satisfied that the applicant is a fit and proper person and is not disqualified by immigration status. Section 55(3) empowers the authority to attach conditions to a licence.
13. The cases have consistently given the definition of “operate” a narrow meaning. Hickinbottom LJ summarised the position in *Milton Keynes Council v Skyline Taxis and Private Hire Ltd* [2017] EWHC 2794 (Admin), [2018] PTSR 894 at [8]:

““Operate”, for the purposes of section 55, has been considered by this court in a series of cases, including *Britain v ABC Cabs (Camberley) Ltd* [1981] RTR 395, *Windsor and Maidenhead Royal Borough Council v Khan* [1994] RTR 87, *Adur District Council v Fry* [1997] RTR 257 and *Bromsgrove District Council v Powers* (unreported) 16 July 1998 (Dyson J). These firmly establish that, in this context, “operate” does not have its common meaning. Rather, it is a term of art defined strictly by section 80(1) as meaning: “in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle ...” Therefore, as Dyson J said in the *Powers* case:

“the definition of the word ‘operate’ focuses on the arrangements pursuant to which a private hire vehicle is provided and not the provision of the vehicle itself ... the word ‘operate’ is not to be equated with, or taken as including, the providing of the vehicle, but refers to the antecedent arrangements.””

14. It is of considerable importance to this case that “operate” does not include providing the vehicle. This is reflected in the statutory language which is limited to “[making] provision for the invitation or acceptance of bookings”.
15. Section 55A was introduced by the Deregulation Act 2015. It provides, so far as material:
 - “(1) A person licensed under section 55 who has in a controlled district accepted a booking for a private hire vehicle may arrange for another person to provide a vehicle to carry out the booking if—
 - (a) the other person is licensed under section 55 in respect of the same controlled district and the sub-contracted booking is accepted in that district;
 - (b) the other person is licensed under section 55 in respect of another controlled district and the sub-contracted booking is accepted in that district;
 - (c) the other person is a London PHV operator and the subcontracted booking is accepted at an operating centre in London; or
 - (d) the other person accepts the sub-contracted booking in Scotland.
 - (2) It is immaterial for the purposes of subsection (1) whether or not subcontracting is permitted by the contract between the person licensed under section 55 who accepted the booking and the person who made the booking.
 - (3) Where a person licensed under section 55 in respect of a controlled district is also licensed under that section in respect of another controlled district, subsection (1) (so far as relating to paragraph (b) of that subsection) and section 55B(1) and (2) apply as if each licence were held by a separate person.
 - (4) Where a person licensed under section 55 in respect of a controlled district is also a London PHV operator, subsection (1) (so far as relating to paragraph (c) of that subsection) and section 55B(1) and (2) apply as if the person holding the licence under section 55 and the London PHV operator were separate persons.”
16. Sub-section (1) does not speak of a contract; but merely of the acceptance of a booking. Sub-section (2), on the other hand, does appear to presuppose there is a contract between the operator who accepted the booking and the person who made it.
17. Section 56 provides:
 - “(1) For the purposes of this Part of this Act every contract for the hire of a private hire vehicle licensed under this Part of this

Act shall be deemed to be made with the operator who accepted the booking for that vehicle whether or not he himself provided the vehicle.

(2) Every person to whom a licence in force under section 55 of this Act has been granted by a district council shall keep a record in such form as the council may, by condition attached to the grant of the licence, prescribe and shall enter therein, before the commencement of each journey, such particulars of every booking of a private hire vehicle invited or accepted by him, whether by accepting the same from the hirer or by undertaking it at the request of another operator, as the district council may by condition prescribe and shall produce such record on request to any authorised officer of the council or to any constable for inspection.

(3) Every person to whom a licence in force under section 55 of this Act has been granted by a district council shall keep such records as the council may, by conditions attached to the grant of the licence, prescribe of the particulars of any private hire vehicle operated by him and shall produce the same on request to any authorised officer of the council or to any constable for inspection.”

Deeming provisions

18. Section 56(1) is a deeming provision. There are a number of types of deeming provisions used in statutory drafting. As Lord Radcliffe explained in *St Aubyn v Attorney-General* [1952] AC 15, 53:

“The word “deemed” is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.”

19. In other words, a deeming provision does not inevitably turn fiction into fact. It may simply put beyond doubt what is already the case, or it may do both as circumstances require. One recent controversial example is section 2(1) of Safety of Rwanda (Asylum and Immigration) Act 2024 which provides:

“Every decision-maker must conclusively treat the Republic of Rwanda as a safe country.”

20. Rwanda may or may not be a safe country; but whether it is or is not, it must be treated as such.

21. The principles applicable to the interpretation of such clauses were authoritatively stated by Lord Briggs in *Fowler v HMRC* [2020] UKSC 22, [2020] 1 WLR 2227 at [27]:
- “(1) The extent of the fiction created by a deeming provision is primarily a matter of construction of the statute in which it appears.
- (2) For that purpose the court should ascertain, if it can, the purposes for which and the persons between whom the statutory fiction is to be resorted to, and then apply the deeming provision that far, but not where it would produce effects clearly outside those purposes.
- (3) But those purposes may be difficult to ascertain, and Parliament may not find it easy to prescribe with precision the intended limits of the artificial assumption which the deeming provision requires to be made.
- (4) A deeming provision should not be applied so far as to produce unjust, absurd or anomalous results, unless the court is compelled to do so by clear language.
- (5) But the court should not shrink from applying the fiction created by the deeming provision to the consequences which would inevitably flow from the fiction being real.”
22. The first, and to my mind the most important point to note about section 56(1) is that it does not apply to the invitation or making of bookings. It applies only to the “contract of hire”. The statutory language differentiates between accepting the booking on the one hand and making a contract of hire on the other. The contract of hire must, in my judgment, refer to a contract under which the hirer agrees to give consideration for their transport in a private hire vehicle. That person may or may not be the person who made the booking. The second point is that section 56(1) is not prescriptive about when the contract of hire is made. The third point is that the contract of hire is deemed to be made with the operator “who accepted the booking” whether or not he provided the vehicle. Thus, in my judgment if a contract of hire is made after the booking is accepted (for instance when the driver arrives to pick up a passenger) that contract of hire is deemed to be made with the operator who accepted the booking. Fourth, section 56(1) does not prohibit the making of a contract of hire by a person other than the operator who accepted the booking. Nor does it say that the operator who accepted the booking is the only party to the deemed contract of hire (other than the hirer). All that it says is that as and when a contract of hire comes into existence, that contract of hire is deemed to be made with the operator who accepted the booking. Fifth, the deeming provision applies for “the purposes of this Part of this Act”; in other words for the purposes of the regulatory scheme and not for any other purpose. If section 56(1) were to require an operator to enter into a contract in the real world with the hirer, that contract would have an existence beyond the regulatory scheme and would thus go beyond the regulatory purpose. Finally, the deeming provision applies to “every” contract for hire, not to some sub-set of such contracts.

23. This final point, in my view, deals with the submission of Mr Bhole KC, for Uber, that section 56(1) was restricted to a case in which one operator “sub-contracted” a booking to another operator.

Implication

24. Mr Bhole accepted that there was no express requirement in the Act for an operator to enter into a contract either with the person who made the booking or with the hirer. But he said that it was a necessary implication.

25. The description of what amounts to a necessary implication has been put in different ways over the years. But I take the following two statements as authoritative. First, in *B (A Child) v DPP* [2000] 2 AC 428, 464 Lord Nicholls said:

“‘Necessary implication’ connotes an implication which is compellingly clear. Such an implication may be found in the language used, the nature of the offence, the mischief sought to be prevented and any other circumstances which may assist in determining what intention is properly to be attributed to Parliament when creating the offence.”

26. Second, in *Pwr v DPP* [2022] UKSC 2, [2022] 1 WLR 789 in their joint judgment Lord Hamblen, Lord Burrows and Lady Arden said at [34]:

“Necessary implication is an implication that is compellingly clear. Whether that is so turns on the words used in the light of their context and the purpose (or mischief) of the provision in question.”

27. Mr Bhole placed heavy reliance on the purpose of Part II of the Act being to ensure passenger safety. He submitted that if there were no contract between the operator and the person who made the booking at the time when the booking was made, the putative passenger would have no redress if, for example, a driver failed to arrive at the booked time and place for pick up.

28. This, to my mind, is an over-expansive view of passenger safety. In my judgment Russell LJ captured the essentials of passenger safety in *St Albans DC v Taylor* [1991] RTR 400, 403 as follows:

“The underlying purpose of Part II is clear; it is to provide protection to members of the public who wish to be conveyed as passengers in a motor car provided by a private hire organisation with a driver. The vehicle has to be licensed before it can be so used and is subject to periodical inspection by the licensing authority to ensure its continuing suitability and safety – see section 48. The driver has to be licensed by the same authority and cannot be licensed without the requisite experience – see section 51.”

29. In other words, passenger safety is ensured by the suitability of the vehicle and the fitness and competence of the driver. As Mr Kolvin KC, for D.E.L.T.A. put it: if you

are getting into a vehicle you need to know that it is safe and that the driver is fit and competent. The passenger is adequately protected if they know that, if anything goes wrong with the hire, they have contractual redress against the operator that accepted the booking. In addition, as I have said, the person who made the booking may or may not be the putative passenger. It is the passenger who is to be protected; not anyone else.

30. Mr Bhole said that the high point of his case was section 55A(2) which presupposes the existence of a contract between the operator that accepted the booking and the person who made it. That submission depends entirely on the use of the definite article (“the contract”). In my judgment that is too slender a peg on which to hang Mr Bhole’s desired conclusion. Moreover, the way in which section 55A(2) is drafted does not accommodate the situation where the person who makes the booking does not incur any contractual liability. In addition sections 55A(3) and (4) contemplate a “sub-contract” between the same operator operating in different districts as if they were separate persons. Clearly, as a matter of the general law of contract a person cannot contract (or sub-contract) with himself. Rather, in my view, Parliament was indifferent about what contract or contract terms (if any) might have come into existence. That indifference is manifested both in section 55A and section 56(1). As Mr Kolvin put it, Parliament has deftly cut through the potential contractual thicket by means of the deeming provision in section 56(1).
31. Although it is true to say that section 55A(2) presupposes that there will be a contract between the operator who accepted the booking and the person who made it, it does not follow that that sub-section requires a contract to be made in the real world. In addition, section 55A(2) does not sit easily with the non-contractual language of the opening part of section 55A(1) or the contractual impossibility envisaged by section 55A(3) and (4). Given that section 56(1) deems the operator who accepted the booking to be a party to the contract of hire, a further implication is, in my judgment, simply unnecessary. Section 56(1) does all the work that needs to be done.
32. Moreover, as Mr Kolvin submitted, if a licensing authority is concerned about disappointing expectations if a driver fails to arrive, it can attach a suitable condition to the operator’s licence. That is, indeed, what Sefton MBC have done in D.E.L.T.A’s case. The licence contains a condition in the following terms:

“When an Operator accepts a hiring they shall ensure that a Sefton licensed Private Hire Vehicle or Hackney Carriage attends at the appointed place and as near to the appointed time as is possible.”
33. Failure to comply with that condition may result in the suspension or even revocation of the operator’s licence.

Private Hire Vehicles in London

34. Private hire vehicles in London are not regulated by the 1976 Act. Instead, they are regulated by the Private Hire Vehicles (London) Act 1998. Although that Act bears a similarity to the 1976 Act, it also contains differences both in its defined terms and its substantive provisions. Most importantly, it does not contain a deeming provision equivalent to section 56(1).

35. In *R (United Trade Action Group Ltd) v Transport for London* [2021] EWHC 3290 (Admin), [2022] 1 WLR 2043 the Divisional Court considered the London Act and held that it was an implied requirement of that Act that the operator entered into a contract in the real world. I express no view on whether the Divisional Court was right or wrong. Suffice it to say that we are dealing with a different Act in different terms.

The declaration

36. The circumstances in which a booking might be made are potentially very varied. The person who makes the booking may do so on behalf of someone else without incurring any contractual liability. Obvious examples are a restaurant arranging a vehicle for a diner who has finished their meal, a carer requesting a booking for a vulnerable person, a hospital arranging for a patient to be collected, a receptionist booking a car for a visiting client and so on. Moreover, a booking may not necessarily specify any journey; or even be made for a journey at all. A vehicle may be booked simply to be on stand-by. It is thus plain (and indeed is now common ground) that the declaration made by the judge is inappropriate. It assumes that the booking is made by “the passenger”, which is not necessarily the case, and it assumes that the contract is one “to provide the journey” which is also not necessarily the case. In addition, the declaration as made stated that the operator was required to contract in order to operate “lawfully”. The implication from this (although not spelled out) is that if the operator did not enter into a contract, it would be committing a criminal offence, even though there is no statutory provision that creates such an offence.
37. The difficulties arising out of the declaration show why the court should be very wary of making declarations in general terms. In the present case there is no dispute between the operators and the licensing authority (which has taken no part in this appeal); and the question was approached as one of generality untethered to any particular facts.
38. In my judgment, it was not appropriate for the court to have made the declaration.

Result

39. I would allow the appeal and discharge the declaration. I would not make any further declaration.

Lord Justice Lewis:

40. I agree.

Lady Justice Elisabeth Laing:

41. I also agree.