



Advice from Alan

Uber drivers are employees...

by Alan Knowsley, consultant, Rainey Collins Lawyers

The Court of Appeal has upheld the Employment Court's decision

that Uber drivers are employees not independent contractors.

The Court looked at the intention of the parties and the true nature of their relationship, rather than the description given to it in the contract.

Uber's terms and conditions expressly state there is no employment relationship between Uber and its drivers. The Court of Appeal examined Uber's terms and conditions and observed that: drivers are prohibited from contacting passengers or making use of any information provided to them by Uber other than to provide transport services; drivers must provide their own equipment including a vehicle, mobile phone, mobile data, and insurance; the vehicle must meet Uber's requirements and be approved by Uber; Uber has discretion to restrict, or prevent, drivers from using the Uber app; drivers are required to exercise "due skill, care and diligence" when providing services; Uber has the right to calculate the fare which can be decreased, but not increased, by

drivers; Uber has the right to set the service fee and charge a driver any additional fees; Uber handles passenger complaints and makes final decisions regarding complaints; receipts are issued by Uber on the driver's behalf; drivers have to meet their tax obligations themselves; Uber has the right to modify its terms and conditions at any time; and drivers can work at any place and at any time, and can stop working without notifying Uber.

These were drafted to avoid the appearance of an employment relationship, but Uber gave itself control over its terms and conditions, day-to-day operations, and the manner in which drivers provide services. The Court concluded that drivers are employees of Uber when logged into, and using, the Uber app.

The Court acknowledged the prevalence of ad hoc services being provided through mobile apps in a 'gig economy'. Each platform will have to be scrutinised by its own contractual arrangements and their operation in reality. It is likely that the Courts will find similar arrangements to amount to an employment agreement rather than a contractor agreement.