

2. To disqualify and prohibit him from driving any vehicle being used in a passenger service for 18 months;
3. To disqualify him from holding or obtaining a passenger endorsement for 18 months from 9 March 2017 to 9 September 2018;
4. To decline the appellant's application dated 13 December 2016 for a transport (passenger) service licence ("PSL").

[2] The factual background is not in dispute. The appellant has held a New Zealand drivers licence since June 2010 and added a passenger ("P") endorsement in June 2013. The P endorsement expired in June 2014. It was renewed for a five year period from 20 January 2015. In March 2016, the appellant was registered by the respondent's driver check system as an "employee" of Uber New Zealand Technologies Limited ("Uber"). At that time, he did not hold a PSL.

[3] In January 2017, the appellant made an application for a PSL. The purpose of this application was for the appellant to operate a taxi service using a small passenger service vehicle in the Christchurch suburban area. The appellant provided the necessary Certificate of Knowledge of Law and Practice for a PSL and provided consent to the respondent to make enquiries as to his suitability to be the holder of a PSL.

[4] The decision-maker, Mr Stevenson, conducted a review of all of the respondent's files and, on 2 February 2017, he reached the preliminary conclusion that the appellant was not a fit and proper person to hold a PSL and that there should be a period of disqualification of the P endorsement for 18 months. Mr Stevenson issued the appellant with notices of proposals and invited submissions. No submissions were received and final decisions were made accordingly. The appellant subsequently provided submissions and they were reviewed by Mr Stevenson but did not persuade him to alter his decisions.

[5] This is an appeal by way of a re-hearing and I must approach the matter *de novo* and exercise my own judgment. The appellant himself accepted that Mr

Stevenson was right to suspend and disqualify him as he did. Aside from a couple of inconsequential points, I agree with Mr Stevenson's reasoning and assessment as at the date of his decision, with the exception of his assessment of the appropriate length of the suspension/disqualification on the evidence before him. Also, I must now consider matters not before Mr Stevenson which may affect my assessment.

[6] Counsel have helpfully identified all of the statutory provisions relevant to this appeal. In the context of this case, it is not necessary that I recite the provisions that give the Court its appellate jurisdiction, or the provisions that set out the relevant criteria. The essential issue on appeal involves my assessment of the appellant's fitness to hold a PSL and passenger endorsement as at the date of the hearing of the appeal and how that affects the length of the suspension/disqualification that should be imposed.

[7] I must first mention a matter not before Mr Stevenson that is against the appellant. On 8 September 2017, the appellant appeared before Judge Strettell for sentencing on a charge that he carried on a passenger service without being the holder of a current passenger service licence. Judge Strettell discharged him without conviction under s 106 of the Sentencing Act 2002. Despite the discharge, I am entitled to take into account the fact of the commission of the offence on this appeal and to make my own assessment about its materiality. I conclude that it adds to the case against the appellant as a relevant offence.

[8] I take into account the following matters:

1. On the basis of the information available to Mr Stevenson, I find that the period of suspension/disqualification exceeded the range reasonably available to him, and I would have reduced it on this account alone. I factor this into my assessment.
2. In his supplementary affidavit of 4 October 2017, Mr Stevenson helpfully set out particulars of very recent legislative changes that accommodate the reality of the provision of small vehicle passenger services on the Uber model. The effect of the changes is that Uber will

hold a PSL and Uber drivers, like the appellant, will not be required to personally hold a PSL, but will be required to hold a P endorsement on their driver's licence. This legislative change does not retrospectively legitimise the appellant's conduct in carrying on a passenger service without a licence. That conduct remains relevant in determining whether the appellant is a fit and proper person to hold a P endorsement and to hold a PSL for purposes other than his Uber driving. However, these developments are relevant for other reasons.

3. Uber is a market disruptor. Rather than seek law change before entering a market, it tends to enter the market and force law change upon legislators by obtaining public support for its services. In so doing, it encourages drivers to infringe the law, including - at least in the appellant's case - paying drivers' infringement fees. No enforcement action was taken against Uber. That means that the large corporate player behind widespread offending avoided any consequences and was not required to cease its activities. On a wider view of community justice, there is unfairness in visiting punitive consequences only upon those at the bottom end of the illegal activities.
4. Another consequence of Uber's tactics was that the respondent was overwhelmed by the scale of the offending. Of the hundreds of drivers working for Uber, very few have been prosecuted and even fewer have had any action taken against them with respect to their licences and endorsements. There is an element of injustice in enforcement against a few of class of offenders, essentially by chance detection of the offending.
5. As the legislation has now changed, it is far less likely that small vehicle passenger driver services will offend because they will not need a PSL if they operate under Uber's umbrella. That diminishes the need for general deterrence.

6. I am satisfied that the risk of the appellant further offending has been reduced by:

- (i) The legitimisation of Uber's operation and by the dispensation of the need for him to hold a PSL.
- (ii) The financial incentive for the appellant to so offend has been removed.
- (iii) The appellant's belated but genuine recognition that he must comply with the law that applies to passenger services.

[9] I conclude that these matters justify a reduction of the periods of suspension/disqualification imposed by Mr Stevenson to eight months. I determine that, upon the expiration of the eight months, the appellant may be considered a fit and proper person to be the holder of a PSL and a P endorsement.

[10] I am not entirely clear that these determinations are sufficient or whether it is necessary that I make any further orders, or orders of greater clarity. I reserve leave to either party to apply for such further orders as may be appropriate. Counsel may confer and submit a draft for my approval and sealing by the Registrar.

G S MacAskill
District Court Judge