

Licensed Private Hire Car Association

Inc London Private Hire Car Association

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9 September 2015

Dear Sirs and Madam

RE: UBER'S APPLICATION TO PROVIDE SERVICES IN BRIGHTON & HOVE

The Licensed Private Hire Car Association represents nearly 200 Licensed Private Hire Vehicle (PHV) and Taxi Operators that undertake PHV bookings connected to over 15,000 licensed PHV & Taxi drivers.

We are aware that the Private Hire Vehicle Licensing Committee at Brighton & Hove City Council is currently reviewing an application submitted by Uber for an Operating Licence, which seeks to enable the firm to roll out its service locally.

We understand that while Uber's Operating Licence has not yet been considered by Councillors, a Licensing Panel is to be specifically convened to review the application and come to a decision on Uber's entry into Brighton & Hove. We understand that Jean Cranford, Assistant Director, Public Safety, is directing the papers ahead of the Licensing Panel with Councillors.

In light of Uber's recent application, please find below a briefing that draws on experience in the London market, which we believe to be of relevance to the Council's review process.

We would be happy to provide further detail should the Council require further guidance on the issues raised below. Documents referred to in this letter are enclosed.

Concerns regarding new Private Hire market entrants

There are a number of issues that currently affect the taxi and PHV industry in London, which will be relevant in the context of Uber's application to PHV services in Brighton & Hove.

Insurance concerns

- Uber London Limited's checks on insurance documents provided by drivers at registration have been shown to be seriously flawed. Uber's business model, based almost entirely online, means that although a PHV driver produces an insurance policy cover note – which might be valid for 12 months – at the point of application, from that moment onwards Uber is unable to say whether the insurance documents provided by drivers remain valid.
- Evidence suggests Uber is also unable to effectively ensure insurance documents are genuine in the first place. The Guardian reported (12 June 2015¹) that a driver was able to accept bookings using a faked insurance document, demonstrating alarming flaws in Uber's certification process. Furthermore, in June 2014, Transport for London (TfL) found that Uber London engaged a private hire driver between 7 and 23 February 2014 without having third party hire and reward insurance in place to carry passengers for reward. TfL successfully prosecuted the driver and Uber London, details of which can be seen on the following link: <http://bit.ly/1M8tyFS>
- Uber responds saying that it conducts random sampling periodic checks on its drivers after they have produced a cover note. This backward looking, sporadic, and piecemeal approach does not provide sufficient reassurance to regulators and cannot be allowed to sustain.
- Similarly Uber argues that it checks its drivers' policies validity with insurers. This claim both lacks credibility (what of confidentiality and privity of contract issues?) and is of no reassurance whatsoever to regulators – the PHV licencing regime is explicitly not self-regulatory in nature. Allowing Uber to operate on this basis drives a coach and horses through the spirit of the legislation.
- We believe that it is fundamentally unacceptable that Uber is unable to say how many of its vehicles on Britain's roads are uninsured.

Industrial-scale tax avoidance

- Bookings with Uber are made through a Dutch company "Uber BV" in breach of section 2 of the Private Hire Vehicles (London) Act 1998. Payments are made to Uber BV, whose profits are taxable in the Netherlands at a highly reduced rate, rather than in the UK where the service was in fact provided. Reputable private hire operators paying UK corporation tax cannot hope to compete with a company designed from the ground up to pay as little tax as possible – one that is unlikely to ever pay meaningful corporation tax in the UK regardless of the scale of its profits. TfL has recently referred the issue of Uber's tax structures to HM Revenue and Customs as noted in a letter from Mayor of London Boris Johnson (dated 29 June 2015) addressed to the Chief Executive of Addison Lee, (the UK's largest PHV Operator) Liam Griffin.
- The Licensed Private Hire Car Association (LPHCA) recently shared a briefing with HMRC that outlines a number of assertions that the LPHCA, on behalf of its members, has brought to HMRC's attention in respect of the unfair competitive advantage which Uber, operating in London through Uber London Ltd has as a result of its tax arrangements. The briefing notes how Uber employs an unfair business model in comparison to domestic UK competition:
 - Uber's corporation tax arrangements: Uber appears to record profits for UK services in the Netherlands – just the sort of arrangement that should be subject to the new 25% "Google Tax" i.e. Diverted Profits Tax;
 - Uber's practice of paying drivers into any nominated offshore bank accounts with the risk that those payments are not declared and taxed in the UK; and

¹ <http://www.theguardian.com/technology/2015/jun/12/uber-whistleblower-exposes-breach-driver-approval-process>

- The making of guaranteed monthly payments to allegedly self-employed drivers – guaranteed earnings normally indicates employment, with PAYE/NIC applicable.
- We attach the LPHCA's letter to HMRC that highlights serious concerns that Uber's VAT arrangements do not comply with existing VAT Regulations. The letter also questions whether VAT Regulations (changes to the place of supply rules for digital services) will apply to companies like Uber London Limited and whether companies such as Uber London Limited will now be required to charge VAT at the prevailing UK rate (20%) for orders taken in the UK.
- HMRC Chief Executive Lin Homer's response is also attached, which does not provide clarity on whether Uber would manage to avoid the new VAT Regulations. We understand that HMRC is currently determining whether to look in detail at Uber's UK tax arrangements.
- LPHCA recently wrote to Alain Lamassoure MEP, Chair, Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE), calling upon the Committee to summon Uber's Chief Executive Travis Kalanick to explain his company's commercial practices and why he feels that is acceptable that reputable PHV companies across Europe should pay corporation tax, VAT and other obligations while his company should not.

Licencing concerns

- Uber BV is not licensed to operate in London (although Uber London Ltd is licensed) and yet it is Uber BV which is discharging the functions properly reserved for TfL Operator's Licence holders. It would be advisable for the Committee to gain clarity on the entity that would hold the Operator's Licence in Brighton & Hove in the event that Uber's application is successful. In Uber's model "making provision" is contacted out, to an out of jurisdiction entity which is for all practical purposes beyond the reach of local authority regulation. Manifestly a breach of section 2 of the Private Hire Vehicles (London) Act 1998 is committed by Uber in London. It for the Panel to determine whether these arrangements are likely to breach section 48 of the Local Government (Miscellaneous Provisions) Act 1976.

Unsupervised drivers and unsafe booking structures

- As a direct consequence of the flaws in Uber's operating model Uber drivers loiter, ply for hire, park illegally and create a public nuisance in areas of high demand such as at airports and stations, undermining London's profile as one of the safest taxi markets in the world.

Unsafe control of customer and driver data

- Uber also fails to take seriously its obligations to protect customer and driver data, and Uber London appears to be committing an offence under the Data Protection Act 1998. This undermines an important feature of the private hire framework in London designed to protect the public. On numerous occasions Uber customers' personal information has leaked into the public domain and the company was the subject of a recent BBC Watchdog investigation into the scale of fraudulent transactions which Uber appears to be either unable or unwilling to address.

Behaviour of group and related companies

- Uber BV – in effect Uber London Ltd's parent company – has knowingly, willingly and intentionally flouted local regulation for profit in France, Germany, Belgium, Italy and the Netherlands – almost every European market in which it operates². Looking to the United States, some two months ago the New York Taxi and Limousine Commission was obliged to seize almost 500 vehicles working with Uber for breaching touting rules.³

² Action in France, Netherlands, Belgium: <http://techcrunch.com/2015/06/29/uber-france-leaders-arrested-for-running-illegal-taxi-company/#.oorm9h:Y3h4> ; Action in Germany: <http://www.bbc.co.uk/news/technology-31942997> ; Action in Italy <http://uk.businessinsider.com/italian-court-bans-uber-2015-5>

³ See: <http://nypost.com/2015/06/16/hundreds-of-uber-cars-seized-for-illegal-pickups/>

Airport Nuisance

- Tracey Smythe (Tracy.smythe@sussex.pnn.police.uk) of Sussex Police has complained constantly of infractions, obstruction, touting and other offences by Uber driver at Gatwick Airport. Bill Nailen (Bill.Nailen@ Crawley.gov.uk) licensing officer at Crawley Council (which includes Gatwick) has also identified numerous licence infringements by Uber drivers.

From the above evidence the committee will be able to see that Uber drivers and Uber management have no respect for law or regulation and have adversely impacted public safety and public order and are clearly unfit to hold an Operator's Licence.

In addition to the above in London there is strong evidence that Uber PHV Drivers are traveling into the London Licensing Area (Cross Border) and parking vehicles without bookings that are then being 'virtually hailed' via the Uber App, which shows their availability and position, so they are acting like a taxi.

The LPHCA, GMB, Unite the Union, the London Cab Drivers Club and the Private Hire Board are seeking the cessation of this practice and action against Uber by Transport for London who will be holding high level talks with the aforementioned this week (10th September) at City Hall.

This behaviour undermines both the taxi and private hire operators and drivers who work in accordance with the two-tier system recently endorsed by the Law Commission review into Taxi & PHV licensing in England & Wales, which is now awaiting action by the Department for Transport.

Uber is also subject to a determination by the High Court in early October about their alleged illegal metering of PHV journeys in London, something the LPHCA contends is illegal in the capital because of the extensive differences between the level of qualifications of taxi and PHV drivers.

For more information, please contact me at your convenience.

Yours sincerely



Steve Wright MBE

Chairman

Licensed Private Hire Cars Association