

MICHAEL DEMIDECKI & CO SOLICITORS

Partners

J D Luckhurst BSc (Hons), Barrister (non-practising), Solicitor Advocate
C N Collett BA (Hons), MSc, Solicitor

Consultant

M R Demidecki–Demidowicz MSc, Solicitor

Our Ref: L269056/acc/JL/LTDA UBER Renewal 2

Your Ref:

Mr Howard Carter
Transport for London
Legal
4th Floor - Y3
5 Endeavour Square
London
E20 1JN

HAND DELIVERED and email howardcarter@tfl.gov.uk

26 November 2019

Dear Sirs,

Re: Uber London Limited - renewal of London PHV Operator's Licence
Our client: Licensed Taxi Drivers Association Limited

As you are aware, we act for the Licensed Taxi Drivers Association (“the LTDA”).

The LTDA is by far the largest Association of Licensed London Hackney Carriage Drivers representing 45% of the London total. It has a long, substantial and unmatched history of active and constructive involvement with TfL and others to strive for the delivery of a safe and effective regulatory regime for both hackney carriages and private hire vehicles in London and beyond.

In that regard, through this firm, the LTDA has for some time sought to ventilate the concerns it and its members and, by dint of this, the wider taxi trade have about the activities of Uber in London and beyond. Most recently, this has included objections by the LTDA to the renewal of the latest iterations of London PHV operator's licences held by Uber London Limited (“ULL”).

In particular:

- (1) by our letter of 5 September 2019 we objected on the LTDA's behalf to the renewal of the Probationary Licence granted to ULL by the Chief Magistrate on 26 June 2018;
- (2) by our letter of 25 October 2019, on behalf of the LTDA, we adopted (and supplemented) this objection in relation to the renewal of the 2 month licence granted to ULL by TfL on 25 September 2019 (“the temporary 2 Month Licence”).

Taxi House, 11 Woodfield Road, London W9 2BA
Tel: 020 7266 3607 | Fax: 020 7266 4050 | Email: johnl@ltda.co.uk
SRA number 599074

Authorised and regulated by the Solicitors Regulation Authority

In broad terms, our correspondence dealt with the following issues:

- Uber’s corporate culture and approach, as illuminated in particular, by convictions for insurance offences, developments concerning the 2016 data breach, fronting by drivers, insurance issues generally, and activities in other jurisdictions.
- Uber’s regional model - its unlawfulness and how it was demonstrative of its attitude to regulation.
- How Uber’s on-demand model substantially adds to congestion and pollution in London and compromises the safety of Londoners.
- How Uber’s conduct subverts fair competition.
- How Uber has demonstrated that it is essentially unregulatable, as illuminated in particular by the necessity, even on the temporary 2 Month Licence, to impose yet further conditions to require of ULL what a fit and proper operator should be doing in any event.
- That public confidence in the licensing regime would be gravely shaken were TfL to allow ULL to remain licensed.

The LTDA is therefore gratified that by the decision announced yesterday, 25 November 2019, whereby TfL has refused to renew the 2 Month Licence (“the November 2019 Refusal Decision”).

Despite being criticised by the Chief Magistrate in her judgment in ULL’s appeal heard in 2018 (“the 2018 Appeal”) for doing precisely this in relation to TfL’s decision to refusal renewal in 2017 (“the 2017 Decision”), we note that ULL have once again responded to the November 2019 Refusal Decision with an immediate attack on TfL.

In a tweet from his personal account, Dara Khosrowshahi, Uber’s CEO, described the decision as “just wrong”. A press release issued on ULL’s behalf at 10:43 am on the day of the decision quoted Jamie Heywood, Uber’s Regional General Manager for Northern & Eastern Europe, as describing the decision as “extraordinary and wrong, and we will appeal”. This is clearly indicative, in a moment of illuminating unguarded haste, of an organisation that purports to have changed but in reality has not. This was following a public statements made in 2018 indicating that he (Dara Khosrowshahi) promised to clean up the company and work with regulators. Further to that the witness statement of Thomas Elvidge, relied upon by ULL in the 2018 appeal, stated “This means putting ourselves in TfL’s shoes – something that we have talked about a lot internally in recent months.”

As you are aware, the LTDA applied for and was granted permission to participate in the 2018 Appeal. It did so through Leading and Junior Counsel. It further appeared and was represented as an interested party in the judicial review of the Chief Magistrate’s decision brought by United Cabbies Group (London) Ltd. Although in the 2018 Appeal the Chief Magistrate did not, in the event, consider that the LTDA’s arguments on Uber’s regional model were relevant to her decision, it gives us no pleasure to observe that the LTDA’s submission at the time (that the regional model was demonstrative of Uber’s attitude to regulation) has been shown by events to be well-made.

The LTDA is planning again, on providing assistance to the Court in relation to Uber's forthcoming appeal. The LTDA's membership are at the "coal-face" in terms of dealing, on a day to day basis, with the issues Uber's disdain for regulation causes. The LTDA itself is naturally anxious to do all that it can to help the Court in arriving at a decision that promotes the safety of its members and, more importantly, the wider public both in London and beyond. For the avoidance of any doubt, the LTDA has not adopted a "knee-jerk" response to the refusal and Uber's stated intention to appeal: it wishes to reach a considered position on the best information available coupled with the long, substantial and unmatched history highlighted in the second paragraph above.

In order that the LTDA can reach a considered and reasoned decision to underpin an application to participate, and on what terms, we request provision of TfL's full reasons for the November 2019 Refusal Decision. For the sake of clarity this should include the written reasons for the September 2019 and the November 2019 decisions. For the avoidance of doubt, in both instances, we are requesting copies of the written reasons TfL would have provided to ULL in accordance with the 1998 Act.

As you will recall, the press release and notice for the 2017 Decision gave only a summary account of only part of the reasons for it. It is apparent that the press release of the November 2019 Refusal Decision (at the time of writing there has been no TfL notice) is, likewise, a summary, and perhaps only a summary of a few of TfL's grounds. This is further reinforced concerningly by the additional 6 conditions that were imposed when the September 2019 decision was made to grant a 2 month licence. Sight of the full reasons is therefore highly material to our client's consideration. Plainly, it is in all parties' interests (including ULL's) that when an application to participate is to be made by the LTDA, it is focused from the outset having had regard to TfL's full decision.

The first basis of our request is therefore to inform our client's considered decision and reasoned decision.

Secondly, a free-standing basis in support of our request for provision of the full reasons, we rely on the principle adumbrated by Elias L.J. in *Oakley v. South Cambridgeshire DC* [2017] EWCA Civ 71 at [26] *per* Elias L.J.:

*There are powerful reasons why it is desirable for administrative bodies to give reasons for their decisions. They include improving the quality of decisions by focusing the mind of the decision-making body and thereby increasing the likelihood that the decision will be lawfully made; promoting public confidence in the decision making process; providing, or at least facilitating, the opportunity for those affected to consider whether the decision was lawfully reached, thereby facilitating the process of judicial review or the exercise of any right of appeal; and respecting the individual's interest in understanding - and perhaps thereby more readily accepting - why a decision affecting him has been made. **This last consideration is reinforced where an interested third party has taken an active part in the decision making-process, for example by making representations in the course of consultations. Indeed, the process of consultation is arguably undermined if potential consultees are left in the dark as to what influence, if any, their representations had.***

(our emphasis)

Thirdly, our client's gratification at the November 2019 Refusal Decision is tempered only by the fact that TfL did not see fit to go further, and revoke ULL's licence with immediate effect (as we requested in our letters of objection), notwithstanding TfL's press release stating that TfL does not

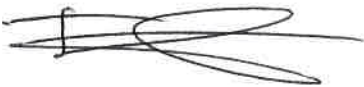
have confidence that Uber has a robust system for protecting passenger safety. Provision of the full reasons will enable our client to scrutinise the basis on which TfL elected to refuse to renew (rather than revoke with immediate effect) and to consider what, if any, urgent steps to take as to this (as to which all our client's rights are reserved).

We are acutely aware from our involvement in the 2018 Appeal that there may be matters of commercial sensitivity contained in the reasons. Given that transparency is one of the principles of good regulation to which TfL must have regard when exercising its functions (see s.21 of the Legislative and Regulatory Reform Act 2006), and given that the connected open justice principle will have applied to the November 2019 Decision (see *Kennedy v. Charity Commission* [2015] A.C. 455), we suggest that the starting point should be disclosure, with matters of genuine commercial confidentiality being dealt with by proportionate redactions.

We make the trite, but nonetheless important point, that TfL's reasons will become public in the course of the appeal in any event.

We have copied ULL into this letter. No doubt if ULL do not intend to appeal, they can inform you direct of that. In the meantime, we proceed on the assumption that, in this regard, the company's statement of intention is accurate.

Yours faithfully,



MICHAEL DEMIDECKI & CO

cc Ryan Dolby-Stevens (rdolbystevens@uber.com)
cc Helen Chapman (HelenChapman@tfl.gov.uk)

Legal Counsel for UK & Ireland
Uber London Limited
Aldgate Tower - First Floor
2 Lemn Street
London
E1 8FA