

MICHAEL DEMIDECKI & CO

Solicitors

M R Demidecki - Demidowicz MSc, Solicitor
J D Luckhurst BSc (Hons), Barrister (non-practising)
and Solicitor advocate

Taxi House
11 Woodfield Road
London W9 2BA
Tel: 020 7266 3607
Fax: 020 7266 4050

Our Ref

L269026/L/LTDA

johnl@ltda.co.uk

Your Ref

Uber Licence Renewal

FAO: HOWARD CARTER

Transport for London - London Taxi and Private Hire Office
Legal
Windsor House
42-50 Victoria Street
London SW1H 0TL

5 June 2017

Dear Sirs,

Uber London Limited - renewal of London PHV Operator's Licence number 7979 **Proposed claim for judicial review**

1. Thank you for your two letters of 2 June 2017.

Provision of reasons to third parties

2. We do not accept that our client's proposed claim is based on any novel or misconceived proposition.
3. In *Oakley v. South Cambridgeshire DC* [2017] EWCA Civ 71, Elias L.J., in introducing his review of the general principles on decision-makers' obligation to give reasons, said (at [26]):

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)

4. He went on to consider the position where there was no statutory obligation to give reasons. He said that “it may be more accurate to say that the common law is moving to the position whilst there is no universal obligation to give reasons in all circumstances, in general they should be given unless there is a proper justification for not doing so” (at [30]). He observed (at [32]):

There is a strong analogy between the need to give reasons in order not to frustrate a statutory right of appeal and the need to do so in order not to frustrate a potential application for judicial review. However, whatever the merits of the analogy, if this were always to ground a basis for requiring reasons to be given, it would be inconsistent with the lack of any general common law obligation to give reasons. Nonetheless, there will be many cases where it is in the public interest that affected parties should be able to hold the administration to account for their decisions, and in the absence of a right of appeal, the only way to do so is by an application for judicial review. Where the nature of the decision is one which demands effective accountability, the analogy with a right of appeal is surely apt.

The LTDA’s position

5. We made detailed representations to TfL on behalf of our client in our letters of 23 March, 25 April and 22 May 2017. At no point was it suggested by TfL that these representations were otiose; on the contrary, we were informed that the representations would be taken into account both before the taking of Decision (Ms. Chapman’s email of 26 April) and after it was taken (your second letter of 2 June, paragraph 5(4)).
6. It is therefore without question that our client has taken an active part in the decision-making process.
7. Hitherto, TfL has accepted our client’s legitimate interest in the issue of the lawfulness of Uber’s operations in London. Our client has engaged in lengthy correspondence and attended numerous meetings with TfL on matters concerning Uber since 2013. Our client participated in TfL’s 2015 application to the High Court for declaratory relief in relation to the “taximeter” issue (where it was the second named defendant after ULL). Its representatives were invited to (and attended) a meeting on 20 May 2014 with TfL where its Leading Counsel, Martin Chamberlain QC, explained his view of the legal position in relation to Uber’s operation.
8. TfL is therefore wrong to refuse to provide any reasons for its decision to our client: not least when our client has made further detailed *legal* submissions

in support of its contentions that the Uber model is unlawful and that the licence should be revoked, or that renewal should be refused.

9. It should be very obvious that a refusal to give reasons for a 4-month licence in circumstances where licence-holder may apply for and be granted a further licence at any point in the meantime militates against those who have made representations (such as our client) from holding the decision-maker to account by judicial review. Our client is completely in the dark as to what issues have been resolved by the Decision (communicated without warning on 26 May 2017 but made on a day of which our client is unaware) and what further issues have been held over, and why. In resolving that our client is not entitled to know either when or why decisions have been or will be made, TfL's conduct (if remaining unchecked) puts its decision-making beyond judicial accountability. If TfL persist in its stance we will seek a quashing order on the basis (under *Padfield*) that it can be inferred from the lack of reasons provided that there was no good reason for the Decision.

“Fit and proper person”

10. TfL has been presented with a body of evidence, both from our client and others (including - we understand - local authorities) that point to ULL not being a fit and proper person to hold a London PHV operator's licence.
11. You have now informed us that TfL considers ULL to be a fit and proper person to hold a licence.
12. You have provided no reasons for coming to this conclusion, against the weight of the many reasons that have been given you for coming to the opposite conclusion - for example, you have not indicated whether TfL accept or reject the truth of the allegations against Uber; whether it regards that evidence as material to the issue of “fitness” etc.; whether, and if so why, that evidence is outweighed by other considerations.

Compliance with the statutory framework

13. We have made forceful and detailed representations as to the requirements of the statutory framework not being complied with and/or being abused by ULL.
14. TfL have stated their conclusion, without giving any reasons for it, that ULL's operation complies with the statutory framework.
15. TfL are required to explain the bases on which they have rejected the representations – both as to the law and the facts - made to them by our client and others.

Further enquiries and “commercial sensitivity”

16. You have said that TfL is pursuing further enquiries which it expects to complete within 4 months, and that it will be open to ULL to apply for a further licence extending beyond this period. It is said that the “issues and material considered in this case” fall into the category of “commercially sensitive” material, and - on that basis - details of its reasoning should not be disclosed.

17. Uber, on the other hand, have given an entirely different explanation for the grant of the ‘4-month licence’.

18. In a communiqué issued on 1 June 2017 to the many tens of thousands of “driver partners” who obtain trade in London under the Uber platform, it said:

You may have read over the weekend that TfL has issued Uber a four month licence which ends in September. In April TfL said that they may consider issuing operators licences with a shorter duration whilst they look at the possibility of introducing higher licence fees for larger operators.

We want to reassure you that we have no reason to believe that TfL will not issue a five year licence in September. Our licence was up for renewal and so we have been granted a shorter licence which covers the period while the consultation on fees takes place. We will update you once the consultation is complete and we look forward to helping keep London moving in the meantime.

(our emphasis)

19. In the circumstances we submit that TfL is obliged, in meeting its obligation to give our client reasons, *to agree with or correct what Uber say*; and if it agrees, to explain why it has previously said it was simply considering commercially sensitive issues and material. Given that two competing explanations (i.e. for the grant to ULL of only a 4 month licence) are now in wide circulation, our client, its members, Uber drivers, and the wider public have a legitimate interest in knowing which one is correct.

20. If the matter has - in fact - been held over for 4 months to allow TfL to renew ULL’s licence for a potentially larger fee, then TfL should say so, unequivocally, and explain why it has not said so before. If the matter has - in fact - *not* been held over for 4 months for that reason, then we do not accept that commercial sensitivity is an absolute barrier to the true reasons being given.

(1) First, in publishing its version of reasons for the Decision, Uber - we submit - has waived any general confidentiality that might exist in the reasons.

(2) Second, the bulk of our client’s representations does not touch upon commercial sensitivity. So:

- (a) our assertion that the Uber model is a plying for hire model is a legal submission based upon Uber's public statements and its terms and conditions with passengers (which are available online) and with drivers (which were in evidence in the *Aslam* case and which are extensively quoted in the judgment);
 - (b) our assertion that ULL's reliance on its licence is a sham is a submission of mixed law and fact, the facts being in the public domain;
 - (c) our submission that the Uber platform requires drivers to act in contravention of s.2(1) of the 1998 is a submission of mixed law and fact, the facts being in the public domain and based entirely upon Uber's public statements;
 - (d) our submission that an unlicensed principal cannot derive authority from a licensed agent who does not exercise control and direction is a submission of pure law;
 - (e) the public safety issues arising from the model are well known to TfL – no 'commercial sensitivity' arises;
 - (f) many of the issues as to ULL's conduct (e.g. the VTOS/Greyball activities, Mr Kalanick's various apologies) are undisputed by Uber.
21. We cannot see that any effort has been made to deal with matters that are *genuinely* commercially sensitive in a suitable fashion to promote, so far as is possible, openness and transparency.
22. As we pointed out in our letter of 23 March 2017, claims of commercial confidentiality are too-frequently made by parties to litigation in order to defeat transparency. Genuinely commercially sensitive matters (and those alone) should be scheduled in a confidential annexe.

Details of the action that the Defendant is expected to take

23. We invite TfL to reconsider its position in the light of the above, and we invite it to provide reasons for its decision **by 12.00 noon on 9 June 2017**, or, in default, a detailed explanation as to why not.

Details of information sought and documents that are considered relevant and necessary

24. We repeat the requests in paragraphs 39, 40 and 41 of our letter of 2 June, which we invite you to reconsider in the light of the above.

Proposed reply date

25. We look forward to receiving your response to this letter as soon as possible and in any event no later than **12.00 noon on 9 June 2017**.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Michael Demidecki', written over a horizontal line.

MICHAEL DEMIDECKI & CO