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The Rt Hon Lord Burnett
Lord Chief Justice of England and Wales
Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 20th August 2018

Dear Lord Chief Justice,

I am writing as General Secretary of the Licensed Taxi Drivers Association ("the LTDA"). The LTDA is a co-operative community benefit society whose membership comprises around 10,500 "black cab" drivers, namely drivers licensed to be in charge of hackney carriages plying for hire within London.

The activities of the global entity "Uber" have long been a matter of concern to the LTDA's membership, and therefore a matter of concern to the LTDA. The LTDA has campaigned for the revocation of the London PHV operator's licence granted to Uber London Limited ("ULL") on the grounds of Uber's poor corporate culture and what the LTDA contends is the fundamental illegality of the Uber model in London. The LTDA has sought to bring private prosecutions of Uber drivers as test cases, including a prosecution against a Mr Lalov to establish whether the Uber model requires drivers to ply for hire. The LTDA made representations in relation to ULL's application to renew its operator's licence. When that application was refused, the LTDA sought to participate in ULL's appeal against that decision.

The LTDA has for some time been concerned about the real possibility of bias in the decisions of Senior District Judge Arbuthnot in the Uber litigation (including the cases in which the LTDA has been involved). The revelations in this weekend's press confirm our concerns. We note the judge's decision to withdraw from presiding over upcoming Uber licensing appeals; but doubt is now cast over the judge's past decisions, which we suggest are as inescapably tainted as any future ones would have been if she had continued to hear Uber's appeals.

A time-line of relevant events is attached to this letter.

It is particularly worrying that the history of the judge's involvement in Uber-related litigation has the appearance of a determination on her part to preside over it. The Chief Magistrate has ordered five matters relating to Uber to be allocated to her for hearing. Two of these (prosecutions of Uber drivers for plying for hire, including the Lalov prosecution) were on the initiative and application of lawyers funded by Uber. I understand that it is highly unusual for a defendant in a criminal case to apply for his choice of judge to hear the trial against him; and even more unusual for such an application to be granted.

STEVE McNAMARA
General Secretary

RICHARD MASSETT
Chairman

ANTHONY STREET
Executive

PAUL BRENNAN
Executive

A further two matters (appeals in Brighton and York against refusals to renew Uber's licence) were transferred to the judge without any application or hearing in open court. I understand that it is unusual for a local licensing decision that is appealed to a local magistrates' court to be transferred out of the locality to the Senior District Judge.

The appeal by ULL against TfL's refusal to renew its London PHV operator's licence ULL was listed for five days, but was completed in two. Notwithstanding the ample availability of court time, the LTDA, whilst permitted to participate and appearing by leading and junior counsel, was limited to 5 minutes' oral submissions. The LTDA's argument (that Uber's proposed "regional" model of operation was unlawful) was said by the judge in her judgment not to be relevant to the matters she had to decide.

The LTDA and its membership has long been troubled by "top down" interference in licensing decisions concerning Uber, where a political (and populist) wish to be in favour of what is lauded as "innovation" has trumped the proper licensing process. The interventions of 10 Downing Street in TfL's processes 2014 and 2015 have already been the subject of detailed press reports. The TfL refusal in September 2017 produced a petition on the Conservative Party website calling on the Mayor of London to "rethink" the decision; followed by a broadcast by the BCC of an interview with the Prime Minister where she described the decision as "disproportionate".

It was hoped that the courts would not be swayed by such lobbying and pressure. Whilst the LTDA was aware that the Chief Magistrate is married to a senior Conservative politician, it did not object to her involvement in the Lalov prosecution (which she adjourned until after the ULL appeal was to be heard, and which was subsequently taken over by the CPS and discontinued) or the ULL appeal because, so far as it was concerned at that point, that of itself did not give rise to any perception of bias.

However, as a participant in the ULL appeal, I was extremely disappointed by the apparently perfunctory consideration given by the judge to the LTDA's arguments. I was further baffled as to how an argument that a model is unlawful can be rejected as irrelevant to consideration of whether the operator of that model was fit and proper to hold a licence.

Further matters arising after the ULL appeal gave me cause for concern.

- I became aware that the judge's brother, Bartholemew Broadbent, had written an email strongly in support of Uber to a regulator in Charlston, South Carolina in January 2016, in which he described being "maliciously attacked" by a local taxi driver in Richmond Virginia, who he then privately prosecuted in the Richmond County Court, and how he used Uber in cities including Paris, London and Beirut because he considered it to be safer.
- I understand that the judge dismissed a prosecution in a test case brought by Reading Borough Council, giving written reasons which did not deal with Reading's contention that the display of the Uber vehicle on the Uber App constituted plying for hire.
- I became aware that the judge had reserved Uber's Brighton & Hove appeal to herself.

This concern crystallised into complaint (and this letter) with the revelations in the weekend's press.

According to that press report, the Chief Magistrate has assigned the Brighton and Hove appeal to another judge. It is a matter of great concern to the LTDA that the Chief Magistrate has taken it upon herself to select the judge, or that she should retain to herself any influence of any kind over the hearing of this or any other licensing appeal lodged by Uber. That is so, irrespective of perceived bias, since the legislative scheme expressly contemplates local decision-making, and not centralised Westminster control.

Accordingly, I ask that you investigate the events described above. I suggest there are matters of broad public concern, which call for inquiry and steps to be taken to prevent their reoccurrence. They are:

- judge selection by defendants in criminal case, and the court's co-operation with that process;
- abrogation of local decision-making in favour of centralised Westminster control;
- the lack of any mechanism by which the parties to a dispute can be made aware of a potential conflict of interest in the judge (here, the close family of the judge providing consultancy services to Uber's investors) at the outset of the hearing rather than through after-the-event journalism.

I respectfully suggest that to do nothing will leave an indelible question mark over the correctness of the decision in the ULL appeal: my members, and indeed those concerned as a whole, will feel short-changed by the manner in which matters of importance, set down to be heard in various magistrates' courts, have been transferred to and dealt with by a judge who now accepts that she should not have heard them.

Yours sincerely



Steve McNamara
General Secretary

Relevant Chronology

- 24.08.17 Defendant's solicitors in the LTDA's prosecution Lalov apply for the prosecution to be transferred "for hearing before the Senior District Judge, Chief Magistrate Emma Arbuthnot".
- 04.09.17 Lalov transferred from Bromley Magistrates Court to the Chief Magistrate sitting at Westminster
- 22.09.17 TfL refuse to renew London PHV operating Licence for Uber London Limited's
- 13.10.17 ULL lodges appeal at Westminster Magistrates' Court against the refusal of its operating licence.
- 23.10.17 Chief Magistrate adjourns *Lalov* until after the hearing of Uber London Limited's appeal.
- 01.11.17 CPS take over and discontinue the Lalov prosecution.
- 12.12.17 York City Council refuses to renew Uber Britannia Limited's operator's licence.
- 11.12.17 First hearing in the ULL appeal. Chief Magistrate indicates that she will not permit the LTDA to raise arguments that the model requires drivers to ply for hire.
- 19.12.17 Chief Magistrate makes directions in the ULL appeal.
- 01.02.18 Hearing of prosecution by Reading Brough Council of Ali transferred to the Chief Magistrate on the application of the Defence and with the approval of the Chief Magistrate.
- 23.02.18 Hearing of UBL's appeal against York City Council's refusal to renew its operator's licence transferred to the Chief Magistrate: directions hearing listed for 27.02.18 cancelled and re-listed for 20.03.18.
- 14.03.18 UBL withdraw appeal against York City Council's refusal to renew its operator's licence.

- 30.04.18 Chief Magistrate makes directions in the ULL appeal and the Reading prosecution. In the ULL appeal, the LTDA is permitted to participate, limited to written submissions of up to 10 pages in length, and supporting documents relating only to alleged behaviour by Uber in controlled districts in respect of which an operator's licence has been refused (Reading and York), limited to a maximum of 20 pages in length.
- 18.05.18 UBL lodge appeal against Brighton & Hove DC's refusal to renew operator's licence.
- 25.06.18-
25.06.18 Chief Magistrate hears the ULL appeal. LTDA limited to 5 minutes' oral submissions. Appeal allowed.
- 06.07.18 &
10.07.18 Chief Magistrate hears prosecution by Reading BC of Ali. Ali acquitted.
- 05.09.18 Case management in the Brighton appeal - listed before the Chief Magistrate.