

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

Your Ref

Ms Helen Chapman
Transport for London - London Taxi and Private Hire Office
Palestra
197 Blackfriars Road
London
SE1 8NJ

25 April 2017

cc: Mr Howard Carter.

Dear Sirs,

Uber London Limited - renewal of London PHV Operator's Licence

Introduction

1. We refer to our letter of 23 March 2017 in which we set out representations on behalf of our client the LTDA in opposition to the renewal of ULL's London PHV's operator's licence. We adopt the same definitions employed in that letter.
2. We write because there is an additional matter which we wish to raise: so-called "cross-border" activities of Uber vehicles licensed by TfL.
3. Further, since our letter, other matters have arisen which are pertinent to our initial representations.

Cross-border activities

4. This concerns (1) London PHVs licensed by TfL working on the Uber platform outside of London and (2) provincial PHVs and hackney carriages working inside London, again on that platform. In relation to the renewal of ULL's operator's licence, we are concerned with the first issue, although the points we make are also relevant to TfL in the enforcement work it conducts within London in relation to non-TfL licensed vehicles.
5. Uber's stated position¹ is as follows:

¹ <https://www.theguardian.com/technology/2017/feb/17/uber-exploiting-loophole-to-spread-tentacles-across-uk-gmb-union-says>

*“Private-hire drivers are not restricted to driving within one licensing jurisdiction. In fact, it’s common practice for drivers licensed in one council to carry out trips in another. Drivers licensed in England and Wales can legally pick up and drop off passengers anywhere, **as long as the trip is pre-booked and their vehicle and driver’s licence match the operator they are registered to.**”*

[This is simply wrong: the legal requirement is that the driver and vehicle are provided to the passenger by an operator licensed by the same authority. “Registration” is Uber’s term, and is irrelevant to the issue of legality.]

*“Drivers who use the Uber app are no different to other licensed drivers – who all go through the same enhanced DBS background checks – **but with our app they have the freedom that comes with being their own boss.**”*

[our emphasis]

6. It is the case that a PHV may be used anywhere in England and Wales as long as the licence for the vehicle, the driver and the operator are issued by the same authority, and the vehicle is operated (within the meaning of the legislation) in that authority’s area: *Adur D.C. v. Fry* [1997] RTR 257.
7. This has always been the law - it is an oft-repeated² myth that cross-border work was a change brought about by the Deregulation Act 2015. In fact, the changes effected by that Act concern sub-contracting. There is no sub-contracting under the Uber model. The drivers alone contract, not any Uber entity. Here, the Deregulation Act 2015 is a red herring.
8. As we observed in our previous letter³, Uber expressly disclaims any control over, or direction of, its drivers. They are free to go wherever they chose within such parts of the UK as the model covers. Uber actively advises drivers of this “freedom”. Uber may suggest areas of high demand⁴, and we understand that it sometimes runs local promotions, including in areas in which it is not licensed⁵, and encourages drivers to go to those areas. But in all cases, driver freedom is the key to the Uber model (to use Uber’s words, “the freedom that comes with being their own boss”).
9. The result is that Uber drivers will go where the work is, whether that is within London or not. There is substantial evidence that TfL vehicles on the Uber platform are working in other areas to such an extent that it undermines the proper regulation of hackney carriages and PHVs in those areas. We have little doubt that you will have awareness of this situation, but for ease of reference

² *Ibid.*

³ Paragraphs 9-10.

⁴ ET Statement, paragraph 124.1.

⁵ Indeed in an area (Reading) where they have been refused an operator’s licence.

we enclose a list of areas we know to be affected, with links to various news stories and other sources.

10. This is not confined to TfL licensed drivers living in or near to London, who are commuting to work in nearby areas. On the contrary, the problem has become a national one.
11. We have three submissions to make on the “cross-border” issue.
12. **Firstly**, the principle in *Adur DC v. Fry* does not exempt a London PHV and its driver from the effects of ss.1, 2 and 4 of the 1998 Act. Wherever they may be in England or Wales, the booking of a London PHV and driver may only be lawfully accepted by a London PHV operator at its operating centre.
13. With Uber, this does not happen.
14. We submitted in our previous letter that the booking is in fact accepted by the driver who plies for hire, with ULL’s operating licence being a sham to give a veneer of legality to that unlawful operation. We pointed out that even if (which we doubt) ULL was somehow accepting bookings after driver confirmation, that does not make the situation any less illegal - the drivers accept as principals, and can derive no authority from the licence of an agent who does not direct and control them.
15. With “cross-border” work, the illegality becomes even more apparent.
16. Take, for example, Manchester. We understand that at present there are PHVs and drivers working in that city on the Uber platform that are licensed not just by Manchester, but also by Birmingham Bolton, Bradford, Bury, Kirklees, Knowsley, Leeds, Liverpool, Newcastle-under-Lyme, Oldham, Rochdale, Rossendale, Salford, Sefton, Stockport, Stoke-on-Trent, Tameside, Trafford, Wakefield, Wigan, Wolverhampton, and TfL.
17. We ask the question: how does Uber ensure that bookings for these PHVs are accepted by an operator licensed by the same authority that licensed the vehicle and driver, at the premises specified on that operator’s licence (in London, being ULL’s operating centre)? If, for instance, a vehicle and driver licensed by TfL were to be on the Uber platform awaiting a booking in Manchester, how would the system ensure that ULL’s operating centre in London is responsible for the acceptance of a booking request for that vehicle? Has this information been sought from ULL? And if not, can it be? It should. As things stand, the claimed-for lawfulness of Uber’s operations rests upon its own unsubstantiated, unevicenced assertions, in circumstances in which those assertions are likely to be untrue.
18. We detailed in our previous letter⁶ Uber’s documented willingness to tell the tribunal of the moment what is in Uber’s interests for that tribunal to hear,

⁶ Paragraphs 59-66.

rather than to act with openness and candour. This should be borne in mind when considering what, if any, answers Uber gives to the questions posed above.

19. **Secondly**, there are drivers licensed by TfL who make no pretence to work in London. TfL will have its own data, but a FOI request of June last year revealed that there were, for example, 114 TfL licensed drivers who live in Sheffield, 145 in Manchester, 78 who live in Southampton, 65 in Blackburn, 35 in Bolton, 52 in Bradford, 115 in Coventry, and 565 living in Birmingham.
20. In cities like Sheffield, Brighton and Birmingham, a TfL PHV licence has become a flag of convenience, so that persons living and working in those localities elect to licence themselves and their vehicles in London rather than in the locality in which they work. This may be due to low fees, different standards for vehicles (Brighton being a prime example) and/or drivers, less restrictive livery requirements, or, worryingly, because the local authority in which they live has refused or revoked a licence (notorious instances of this occurring in Southend).
21. This is not simply a matter that could be dealt with by TfL asking applicants whether they intend to use their licences within London (see *R (on the application of Newcastle City Council) v. Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin)). Rather, it is a demonstration of what occurs when a plying for hire model operates under the fiction that there is a local operator who operates drivers and vehicles, when plainly this is not the case. The resultant geographic freedom claimed by those operating under the model has not only resulted in drivers based in or near London branching out into other authority areas, but also (it is increasingly apparent) in a realisation on the part of drivers nationally that they need not trouble with their local licensing systems at all.
22. **Thirdly**, the hackney carriage and PHV licensing scheme is inherently local in nature: *Blue Line Taxis (Newcastle) Limited v. The Council and City of Newcastle upon Tyne* [2012] EWHC 2599 (Admin) at [31, 67 and 81]. Enforcement is local: it is a legitimate aim of a local licensing authority to have local vigilance, control and enforcement over operators (*ibid.* at [67]). TfL's licensing of ULL catastrophically undermines this local control. This is no mere technicality; it has real adverse consequences both for the two tier system and for enforcement generally. So, for example:
 - (1) In Brighton, despite that authority licensing UBL, vehicles working that city on the platform are overwhelmingly licensed by TfL. TfL vehicles do not comply with Brighton's "Blue Book", which requires all PHVs to be fitted with CCTV. The local requirements imposed by the democratically elected representatives are undermined as a result.
 - (2) In Watford, which lawfully operates a quota system for hackney carriages, TfL licensed Uber vehicles are standing in a virtual rank close

to (and in some cases on) the hackney carriage rank. They effectively stand and ply for hire in Watford under the guise of TfL's licences.

- (3) In Southend, drivers whose licences were revoked by the local authority on the basis for not being fit and proper to hold them were able to carry on working in Southend by the expedient of applying for TfL licences and signing up to the Uber platform. The Uber model, licensed by TfL, has here subverted the local authority's regulatory function.
23. TfL will be aware of local authority efforts to address very serious issues of child sexual exploitation involving drivers. This has included measures such as CCTV in vehicles and the introduction of compulsory safeguarding training. The potential that TfL's licensing of ULL gives for these efforts to be side-stepped *by those who would wish to side-step them* is obvious.
24. One feature of the provincial licensing scheme is that certain local authorities will have particular signage and livery to differentiate between hackney carriages and PHVs. Provincial authorities frequently have less stringent conditions on hackney carriages than those prevailing in London; so, for instance, many local authorities do not impose a tight turning circle requirement or a wheelchair accessibility condition on hackney carriages. So, in the provinces, hackney carriages can be saloon vehicles of the same manufacture as PHVs. Signage and livery therefore becomes important. The TfL PHV signage is minimal - roundels and no more. There are no livery requirements (unnecessary in London because of the distinctive nature of London cabs). Thus those who wish to evade signage and livery requirements in the provinces may do so by the simple expedient of obtaining a TfL licence.
25. These signage and livery issues exacerbate the difficulties TfL's licensing of ULL causes local authorities on a daily basis. There is evidence of immense frustration on the part of local authority officers and elected members of the activities of Uber sabotaging the local licensing regime.
26. We specifically invite TfL, if it has not already done so, to make enquiries of the local authorities we have listed in the schedule to this letter to investigate what issues TfL licensed drivers and vehicles are causing in those areas.

ULL is not fit and proper to hold a PHV operator's licence

27. In the month since we wrote last, the revelations concerning Uber's lamentable conduct have continued unabated.
28. Uber has been reported as operating a secret programme called "Hell" to undermine a competitor, Lyft⁷.

⁷ <https://www.theinformation.com/ubers-top-secret-hell-program-exploited-lyfts-vulnerability>

29. In court proceedings between Waymo and Uber in San Francisco, Waymo has asserted that it has uncovered new evidence that UTI took and copied trade secrets⁸.
30. California's Public Utility Commission has threatened Uber with fines for repeatedly failing to take action against drivers that passengers said were drunk⁹.
31. There have been further resignations: Rachel Whetstone as global head of PR¹⁰ and Sherif Markaby as vice president of global vehicle programmes, amongst others¹¹. The probe into Uber's workplace sexual harassment has been extended because more time is needed to complete it¹².
32. It has most recently been revealed that Uber's "Greyball" tactics have extended not just to regulators but to one of the major suppliers of its App, namely Apple, resulting in a threat from Apple's CEO to Mr Kalanick to remove the App from sale. Uber not only ignored Apple's requirements for App providers, but then used cloaking software in an attempt to hide this from Apple. The New York Times' report of 23 April 2017¹³ makes instructive reading and we enclose a copy with this letter. Uber's relentlessly aggressive business tactics are set out once more; Mr Kalanick is quoted, inter alia, as follows:

"We're in a political campaign," he once said at a technology conference, "and the candidate is Uber. The opponent is named Taxi," he said, adding a rude descriptive. "Nobody likes him, he's not a nice character, but he's so woven into the political machinery and fabric that a lot of people owe him favors."

Competition law

33. We also refer TfL to the detailed investigatory work conducted by Guy Adams of The Daily Mail, prompted in part by the results of FOI requests made by our client. Our client is gravely concerned by what has been uncovered¹⁴; and it is determined to pursue all proper avenues in respect of these matters.

⁸ <https://www.bloomberg.com/news/articles/2017-04-21/waymo-urges-judge-to-bar-uber-s-levandowski-from-robocar-project>

⁹ <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M182/K872/182872304.PDF>

¹⁰ <http://www.prweek.com/article/1430356/uber-ceo-announces-resignation-global-pr-chief-rachel-whetstone>

¹¹ <http://www.telegraph.co.uk/technology/2017/04/18/ubers-problems-deepen-executive-behind-self-driving-cars-joins/>

¹² <http://www.dailymail.co.uk/news/article-4433598/Eric-Holder-extends-Uber-sex-probe-Huffington-memo.html>

¹³ <https://www.nytimes.com/2017/04/23/technology/travis-kalanick-pushes-uber-and-himself-to-the-precipice.html>

¹⁴ See in particular <http://www.dailymail.co.uk/news/article-4430608/Now-growing-Uber-scandal-engulfs-minister.html>

34. It now appears that the CMA response to TfL's PHV regulation proposals was produced following communications between BIS and CMA as a result of high level lobbying on the part of Uber.
35. The fact, timing and content of the CMA response¹⁵ was extraordinary at the time it was made. It is more extraordinary now. Indeed, we note that the entire document appears to be predicated on the basis that PHVs and taxis (hackney carriages) should compete 'on a level playing field' without making any reference to the fact (or perhaps not even being aware of the fact) that only hackney carriages may ply for hire, and that the regulatory scheme deliberately distinguishes between them and PHVs for that very reason.
36. We must emphasise that in relation to the matter in hand (i.e. the renewal of ULL's licence) no competition law issues come into play. If, as we contend, ULL's licence should not be renewed for the reasons set out in our correspondence, then it should not be renewed: a refusal to renew is not rendered unlawful on competition grounds.

Further requested steps

37. We request on behalf of the LTDA that:
 - a. together with our previous letter, these further written representations are placed before the appropriate decision-makers in relation to ULL's application to renew its London PHV operator's licence;
 - b. the LTDA is permitted to attend, call evidence and make representations at a hearing before the said decision-makers, convened to determine whether or not to renew ULL's licence (the importance of this decision to Londoners cannot be overstated, and a hearing, we suggest, is a manifestly appropriate step to take).
38. We request that TfL make the enquiries of Uber and the specified local authorities we mention in the body of this letter.
39. We repeat our submission that ULL's licence should be refused.
40. We again submit that it is imperative that TfL provide explicit and detailed reasons for whatever decision it makes.
41. We repeat our request that TfL immediately and urgently investigate what use of masking and cloaking programmes, software tools, devices or practices Uber has made in London.

¹⁵https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481450/CMA_response_to_TfL.pdf

42. If there are any points in this letter which we can clarify or particularise further, please do not hesitate to contact us and will endeavour to provide such clarification and particularity with all due expedition.

Yours faithfully,

A handwritten signature in black ink, appearing to be a stylized 'M' followed by a large loop and a long horizontal stroke.

Michael Demidecki & Co.