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Our Ref L269026/L/LTDA

Your Ref Uber Licence Renewal

FAO: MR HOWARD CARTER

Transport for London - London Taxi and Private Hire Office
Legal

Windsor House
42-50 Victoria Street
London SW1H 0TL

cc Ms Claire Lefort, Legal

2 June 2017

Dear Sirs,

Uber London Limited - renewal of London PHV Operator's Licence number 7979 **Proposed claim for judicial review - Pre-Action Protocol Letter of Claim**

Introduction

1. This letter is sent in accordance with the Pre-Action Protocol for Judicial Review.

The Claimant

2. The proposed Claimant is Licensed Taxi Drivers Association ("the LTDA") of Taxi House, Woodfield Road, London W9 2BA.
3. The LTDA is a co-operative community benefit society whose membership comprises around 10,500 "black cab" drivers (so, drivers licensed by TfL under s.6 of the Metropolitan Carriage Act 1869 to be in charge of hackney carriages plying for hire within London).

The Defendant

4. The proposed Defendant is Transport for London ("TfL") of Palestra, 197 Blackfriars Road, London SE1 8NJ, in its role as the licensing authority for the purposes of the Private Hire Vehicles (London) Act 1998 ("the 1998 Act").
5. The dispute in question has been handled to date by:
 - (1) Ms. Helen Chapman (General Manager, London Taxi & Private Hire);
 - (2) Mr Howard Carter (General Counsel); and

- (3) Claire Lefort (Legal).

The Claimant's legal advisers dealing with this claim

6. The solicitors to the proposed Claimant are Michael Demidecki & Co. The partner with conduct of the matter is John Luckhurst, whose contact details appear above.
7. Counsel for the proposed Claimant are Gerald Gouriet Q.C. and Charles Holland, both of Francis Taylor Building, Inner Temple, London EC4Y 7BY.

Details of the matter being challenged

8. The matter being challenged is:
The failure of TfL to provide the LTDA with reasons for its decision on 26 May 2017 ("the Decision") to grant by way of renewal a London PHV operator's licence to Uber London Limited ("ULL")

Details of Interested Parties

9. A copy of this letter has been sent to ULL.
10. We are aware that other parties objected to the renewal of ULL's said licence, or made representations as to what conditions should be imposed on its licence. We are not aware of the identities of all who have made representations, and in some cases those who we know have made representations have not disclosed the substance of those representations to our client. As soon as is reasonably practicable, the LTDA will publish this letter on its website at:

www.ltdda.co.uk/media-centre/campaigns

and it will notify this to those who it knows or suspects have made objection and/or representation, as well as publicising the letter by press release and on social media.

The issues

Summary of the facts

11. On 31 May 2012, TfL granted a London PHV operator's licence to ULL. That licence was due to expire on 31 May 2017.
12. On 23 March 2017, this firm wrote to TfL on behalf of the LTDA making detailed representations in opposition to any application by ULL to renew that licence. That letter:
- (1) requested that the written representations were placed before the appropriate decision-makers in relation to ULL's anticipated application to renew its London PHV operator's licence;

- (2) requested that 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;
 - (3) submitted that ULL's application to renew its licence should be refused;
 - (4) submitted that TfL provide explicit and detailed reasons for whatever decision it makes, and that if there were matters that were genuinely "commercially confidential", then those and those alone should be scheduled in a confidential annexe;
 - (5) requested that TfL immediately and urgently investigate what use of the "violation of terms of service" (VTOS) programme and Greyball tool, or any similar masking programmes, software tools, devices or practices, Uber have employed in London – in particular reviewing all information provided by ULL to TfL about Uber's booking process;
 - (6) requested that the findings of the investigation in (5) should be published;
 - (7) invited TfL to contact this firm if any points required further clarification or particularisation,.
13. On 25 April 2017, this firm wrote again to TfL, making further detailed representations on behalf of the LTDA and, inter alia, repeating the said requests, submissions and offer.
14. On 26 April 2017, Helen Chapman of TfL emailed the LTDA, acknowledging receipt of this firm's letters and stating:
- TfL does not arrange hearings before making licensing decisions. We are however grateful to you for your detailed written representations which will be taken into account and for your offer to provide further clarification should that be necessary. I can confirm that appropriate steps are being taken by TfL in response to the recent articles in the press about the use of "Greyball" by Uber. [underlining added]*
15. Having been copied into a representation from CAUTION Limited to TfL, dated 22 May 2017, this firm wrote to TfL the same day, agreeing with and adopting a submission made by CAUTION in their representation, namely that ULL's licence should be revoked with immediate effect on the basis that the interests of public safety require this.
16. No requests for clarification or further particularisation of their letters of 23 March, 25 April, or 22 May were made by TfL of this firm.
17. Late in the afternoon on Friday 26 May 2017, without prior warning to LTDA, TfL updated its online licensing register in respect of ULL's licence to show a changed expiry date (from 31 May 2017) to 30 September 2017.

18. By a letter emailed later that same day (26 May 2017), this firm asked Tfl whether it was to receive the explicit and detailed reasons requested in its previous correspondence, and if so, when. A response was sought by 12.00 noon on 30 May 2017. The reason for urgency was explained -

As you will have appreciated from our representation, our client's membership is having to deal with the consequences of ULL's unlawful operation which gives rise to serious risks (and actual harm) to public safety on a daily basis. This is a matter of utmost gravity, where - we suggest - our client (and the public generally) is entitled to know the reason for this decision as a matter of urgency.

19. We further stated that we struggled to see on what basis a renewal could have been made for 4 months, given that the statutory test for granting a licence is whether an applicant is "fit and proper" to hold one (s.3(3) of the 1998 Act). We asked if ULL had satisfied that test, then why had a licence been granted for 4 months as opposed to the more usual 5 years.
20. By a letter emailed to this firm at 11.07 on 30 May 2017, Tfl's Legal department acknowledged receipt of our letter of 26 May 2017 and stated:

We will aim to provide a response by close of business on 1 June.

21. Close of business on 1 June 2017 has passed. We have heard nothing more from yourselves.

Reasons: relevant legal principles

22. In *R. v. HEFC ex parte Institute of Dental Surgery* [1994] 1 W.L.R. 242, Sedley J. (as he then was) analysed the authorities, including the decision of the House of Lords in *R. v. Secretary of State for the Home Department ex parte Doody* [1994] A.C. 531 to show that there are two distinct circumstances where reasons should be given.
23. The first, as in *Doody*, was where the nature of the decision required reasons on grounds of fairness. The second was where, to use the terminology of Sedley J in *Dental Surgery*, there was something "aberrant" in the particular decision which called out for explanation.
24. The former justifies the imposition of a duty to give reasons in a class of case whereas the latter justifies it by reference to the particular decision in issue.
25. In *Doody* the House of Lords held that where a prisoner received an indefinite sentence with a minimum term to be served, the duty of fairness required the Home Secretary (who at that time fixed the minimum term) to give reasons how that decision had been reached. Lord Mustill, giving the only reasoned judgment in their Lordship's House, also held that imposing the duty could be justified on the alternative ground that it was not disputed that

the Home Secretary was subject to judicial review, but that would be frustrated without reasons for his decision being provided (p.565). He said -

I think it important that there should be an effective means of detecting the kind of error which would entitle the court to intervene, and in practice I regard it as necessary for this purpose that the reasoning of the Home Secretary should be disclosed.

26. An example of an aberrant decision, of the type referred to by Sedley J in the *Dental Surgery* case, is that considered in *R. v Civil Service Appeal Board ex parte Cunningham* [1999] 4 All E. R. 300 (CA). The case concerned the amount of compensation which the Civil Service Appeal Board awarded to a prison officer whom it found to have been unfairly dismissed. The officer had no right of recourse to an industrial tribunal. In accordance with the Board's policy, no reasons were given for the amount awarded. The court held that the amount was so low when compared to the amount which an industrial tribunal would have been expected to award that it was prima facie irrational. Lord Donaldson MR held that this was a judicial decision where fairness required the giving of reasons. The Board should provide outline reasons to enable the applicant to know that it had directed its minds to the right issues and reached a lawful decision. McCowan LJ added that it was a case which "cries out for some kind of explanation from the Board". There was a genuine concern that justice may not have been done given the disparity between the amount awarded and the amount which an industrial tribunal might have been expected to award in similar circumstances.
27. Where the issues dealt with by the tribunal or administrative actor are "extremely important", the duty to give reasons may be equated with the general duty in courts to give their reasons, rather than the "less exacting standard applied to ordinary administrative decision-making": *Mental Health Review Tribunal* [2008] EWHC 2445 (Admin) at [18].
28. It is clear that the reasons given must be intelligible and must adequately meet the substance of the arguments advanced: *Re Poyser and Mills' Arbitration* [1964] 2 Q.B. 467 at 477-478; approved in *Westminster CC* [1985] A.C. 661 at 673. Reasons should demonstrate that a systematic analysis has been undertaken by the decision-maker.
29. The existence of a legitimate expectation affects procedural fairness in that a representation or practice or policy indicating that a particular procedure will be followed can give rise to an entitlement that the procedure be followed: *R. v. Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators' Association* [1972] 2 W.L.R. 1262.

Reasons: why TfL's failure to provide reasons for the Decision is contended to be wrong

30. It is submitted the nature of the Decision is one where fairness requires that reasons are given.
31. Decisions made under s.3 of the 1998 Act give the applicant a right of appeal (s.3(7) of the 1998 Act): decision-makers should give reasons to enable the appellate court to understand why the decision was made and whether it is wrong or correct.
32. Third parties, such as our client, have no right of appeal (on the merits) against a s.3 decision, and their only remedy is judicial review. Not to give reasons, or to withhold reasons given, would stifle that remedy.
33. The Decision itself is aberrant within the *Dental Surgery* meaning. The standard London PHV operator's licence is for a term of 5 years. Here, a licence of 4 months has been granted. The statute provides that a licence shall be granted if, *inter alia*, the licensing authority (TfL) is satisfied that the applicant is a fit and proper person: s.3(3)(a). As stated in our letter of 26 May 2017, we struggle to see on what basis a renewal could have been made for 4 months, given this test. We asked if ULL has satisfied this test, then why has the grant only been for 4 months as opposed to the more usual 5 years? We have not received an answer.
34. This is a decision which cries out for explanation. Something – TfL have not said what it is – has decided TfL not to give ULL the usual five-year licence. Whatever that is cries out for explanation, not least given the very real and pressing interest of our members in the matter.
35. Finally, our client has a legitimate expectation in being provided for reasons. It has made detailed representations in relation to this application. Those representations have been received and acknowledged by the decision-maker. It has requested explicit and detailed reasons. At no point has it been indicated that no such reasons were to be provided.
36. TfL said that that they would aim to provide a response to our request of 26 May "*by close of business on 1 June*". No such response has been provided, nor any explanation as to why it has not. It is inconceivable that reasons for the Decision do not exist, or that ULL was not given them when it was granted only a 4-month renewal of its licence instead of the usual 5 years. TfL has taken a week to consider whether it is willing to provide those reasons to our client.

Details of the action that the Defendant is expected to take.

37. TfL is expected to provide reasons for the Decision by 4.00 pm on 2 June 2017 or, in default, a detailed explanation:

- (1) if reasons are to be provided, when;
- (2) if reasons are not to be provided, why not.

ADR proposals

38. We do not believe this matter is appropriate for Alternative Dispute Resolution.

Details of information sought

39. Full reasons for the Decision, sufficient to enable our client to understand -
 - (1) why ULL has been granted a renewal of its licence at all;
 - (2) why ULL has been granted a renewal for 4 months only;
 - (3) why there has been a delay of a week (at least) in complying with LTDA's request for reasons (made on 26 May 2017);
40. The identity of decision maker.

Details of documents that are considered relevant and necessary

41. We consider that disclosure of the following documents is relevant and necessary:
 - (1) all correspondence between TfL and ULL concerning:
 - (a) ULL's application to renew its London PHV operator's licence;
 - (b) TfL's investigations into ULL's operating model;
 - (2) all representations received by TfL in relation to the renewal of ULL's operating licence.

Address for reply and service of Court documents

42. Please send your reply to this firm to the above address. We have instructions to accept service.

Proposed reply date

43. We look forward to receiving your response to this letter as soon as possible any in any event no later than 4.00 pm on Friday June 2 2017.

Yours faithfully



MICHAEL DEMIDECKI & CO