

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

L269046/ss/L/LTDA(Uber v TfL Licence Appeal)

johnl@ltda.co.uk

Your Ref

FAO: Mr Howard Carter

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

24 November 2017
(Revised)

Also by email to: HowardCarter@tfl.gov.uk

Dear Sir

Uber London Limited v Transport for London

As you will be aware, on 22 September 2017 Transport for London (“TfL”) announced that it had informed Uber London Limited (“ULL”) that it would not be issued with a London PHV Operator’s Licence after expiry of its current licence on 30 September. The expiry date has since been extended to 11 December 2017.

The grounds for refusing to renew the licence were given as -

“TfL has concluded that Uber London Limited is not a fit and proper person to hold a private hire operator licence.

TfL considers that Uber’s approach and conduct demonstrate a lack of corporate responsibility in relation to a number of issues which have potential public safety and security implications.”

Since the refusal to renew there have been some changes in Uber’s senior management, coupled (so it is asserted) with an improved corporate responsibility.

We have been advised by leading counsel that serious misconduct by a company licence holder cannot be wiped out merely by a change of directors or other company restructuring. In *R. v Knightsbridge Crown Court Ex p. International Sporting Club (London) Ltd.*¹ the gaming licences of three London gaming clubs had been cancelled on the ground that the companies owning the clubs were not fit and proper persons to hold them. The companies appealed. Before the hearing of the appeals the management of the companies was replaced by an *entirely new* team, who put

¹ [1982] Q.B. 304

in place various measures to correct past transgressions and ensure they did not recur. On appeal, the companies contended that despite past misconduct the companies were now reformed by the complete change of management and were therefore fit and proper persons to hold the licences. Nevertheless, the High Court ruled that notwithstanding the changes of management, improved internal procedures, and even new shareholdings, the past misconduct of the companies remained a relevant consideration – which, in an appropriate case, could be fatal to the continuance of the licence. Lord Justice Griffiths said -

“We have no hesitation in saying that past misconduct by the licence holder will in every case be a relevant consideration to take into account when considering whether to cancel a licence. The weight to be accorded to it will vary according to the circumstances of the case. *There may well be cases in which the wrongdoing of the company licence holder has been so flagrant and so well publicised that no amount of restructuring can restore confidence in it as a fit and proper person to hold a licence.*”

The judge added that public confidence in the licensing authority itself would be gravely shaken by allowing such a company to continue to operate, even with brand new directors and shareholders.

When TfL announced its refusal to renew ULL’s London PHV Operator’s Licence the conduct complained of included -

“[ULL’s] approach to explaining the use of ‘Greyball’ in London - software that could be used to block regulatory bodies from gaining full access to the app and prevent officials from undertaking regulatory or law enforcement duties”.

A series of revelations has implicated Uber more deeply in misconduct than was realised at the time of TfL’s refusal to renew its licence. The most recent story to break is that, in 2016 there was a global data breach in which the personal information of 50 million Uber customers and 7 million drivers were stolen. Not only did Uber fail to tell regulators about this breach, but it paid the criminal hackers ‘ransom money’ of \$100,000 to delete the data and keep the breach quiet. (There is no way of knowing if they did so.)

It has been reported today (The Wall Street Journal) that Uber’s new chief executive, Dara Khosrowshahi, knew about the data breach some two weeks after he took the helm at Uber on September 5. This is to be contrasted with Mr Khosrowshahi’s press release dated 21 November 2017 which said he had “recently” learned of the breach; it appears that he had known for at least two months before Uber went public with the news, and, crucially, before regulators (including TfL) were informed.

Mr Khosrowshahi’s reported desire to await the results of an investigation does not excuse his failure to make a prompt disclosure to regulators of the known fact of the data breach. Furthermore, it would appear that Mr Khosrowshahi knew of the breach before ULL’s application to renew its

licence had been determined, and knew of it during his “constructive” meeting with TfL officials in October, and yet, so far as we can tell, he failed to disclose it to TfL.

The most damning consequence of this, the latest in a series of revelations, is that Uber cannot with any credibility now say that restructuring of its management team has made it fit and proper to hold the licence: Mr. Khosrowshahi cannot escape being seen as implicated in a cover-up, even if he played no part in it until the last two months of its existence.

The emerging truth about Uber presents a picture of systemic regulatory misconduct. It is difficult to imagine a sustained course of wrongdoing by a company licence-holder that better fits Lord Justice Griffith’s words - *“so flagrant and so well publicised that no amount of restructuring can restore confidence in it as a fit and proper person to hold a licence”*.

ULL was held to not be a fit and proper person to hold a London PHV Operator’s Licence over a month ago; we now know that its misconduct had been worse, not better, than it was thought then. The point is long past where the public’s confidence in Uber can be restored by a handful of sackings, resignations or other token restructuring.

We urge you to revoke ULL’s licence now. We submit that the interests of public safety require such suspension to have immediate effect.

Yours faithfully



MICHAEL DEMIDECKI & CO
Cc Helen Chapman