



**Brighton & Hove  
City Council**

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Date: 23<sup>rd</sup> October 2015  
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Dear Sir or Madam:

**RE: Licensing Panel (Non Licensing Act 2003 functions) hearing held on Monday 19<sup>th</sup> October 2015 in respect of the application for an operator licence under the Taxi and Private Hire Vehicle Legislation for Uber Britannia Ltd: Notification of the Determination of Panel.**

Preliminary Consideration: Can Uber meet the requirements of the term "Operate" as defined by S80 of Local Government (Miscellaneous Provisions) Act 1976 ( The 1976 Act)

The Panel have considered as a preliminary legal issue a point that was raised in oral submissions at the hearing without advance warning by Mr Wilson, Company Secretary of the Campaign Against Unlawful Taxis in Our Nation (CAUTION). Mr Wilson specifically referred the Panel to the case of Kingston Upon Hull City Council v Wilson (1995). In essence it was suggested to the Panel that the application should not be considered at all on the basis that by the reliance on the Uber App to arrange and process bookings Uber are not operating within the licensing area, as per the definition in s80 of the 1976 Act, since the server which facilitates the App is outside of the UK.

We have requested and considered legal advice on this point. We agree with the sentiment recently expressed by the High Court in the judicial review decision relating to Uber and Transport for London that the existing legislation does not sit comfortably with the advent of new technology, and consequently new ways of conducting a taxi hire business. Irrespective of the mechanism, the reality is that Uber provide a connection between drivers and passengers in the licensed area that in our view amounts to a provision under the Act. We have therefore concluded that they can properly be considered to be an operator under the Act, and we have gone on to consider the requirements as to their suitability to be granted a licence.

The substantive application: the framework of the decision

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The legislation states as follows:

*55. Licensing of operators of private hire vehicles.*

*(1) Subject to the provisions of this Part of this Act, a district council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operator's licence:*

*Provided that a district council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operator's licence.*

*(2) Every licence granted under this section shall remain in force for five years or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case.*

*(3) A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary.*

*(4) Any applicant aggrieved by the refusal of a district council to grant an operator's licence under this section, or by any conditions attached to the grant of such a licence, may appeal to a magistrates' court.*

As the legislation above makes clear, the key consideration for the Panel is whether Uber are "fit and proper". The principal aim of the test to ensure public safety is paramount. In addition to the dictionary meaning of 'fit and proper' we have been referred to additional definitions. These were set out by the Panel solicitor Mr Court at the hearing, and no objections were raised to this approach. This was that in considering what is 'fit and proper' we are entitled to consider whether we would want a loved one to get in to a licensed vehicle – in this case of this operator . The second question it was identified we could consider was whether we would want information of a private nature to be in the hands of a driver / operator – for instance holiday plans. Given the specific allegations around hacking of the Uber app raised by objectors referred to below, this is of particular relevance.

In addition the attention of the Panel was drawn to the 3<sup>rd</sup> Edition of the Brighton and Hove City Council 'Blue Book'. This is a document produced by Brighton and Hove City Council for hackney carriage and private hire drivers, vehicles and operators. Both the applicant and those making representations were in agreement that each should operate on a 'level playing ground' and so the Blue Book should be applicable to all operators. It was noted and we repeat that the Blue Book is currently under revision and so there could be changes (particularly in the area of protection of the vulnerable) and these changes will be universally applied.

The legislation sits primarily with the Local Government (Miscellaneous Provisions Act 1976). This is set out in part above. The Panel also noted the relevance of the Deregulation Act 2015 and that the relevance of this in particular in relation to the length of any licence is further considered below.

The guiding principle for us was that this Panel is an administrative decision making body and we were very conscious of the principles of natural justice and that we must deal with all parties in a fair and even minded manner.

We have looked at this application on its own merits, taking into account the specific facts and circumstances which relate to the application, as well as the general principles outlined above.

### Consideration of Representations

We would like to thank all of those who took the time and trouble to make written submissions or attend the Panel hearing, especially as many were coming some considerable distance.

The Panel have considered and listened carefully to all the matters raised both in the written submitted representations and by those who spoke at the meeting. In making our decision below we have considered every substantive relevant point.

### The issues

We were provided with a large volume of material and a wide range of issues were raised with us. We do not believe it is necessary to go through the documents page by page in this notification and so we start with our approach to some of the evidence we were asked to consider:

- The Panel noted that a number of allegations had been made about the conduct of Uber or its drivers, and it was necessary for the Panel to evaluate the evidence base of those allegations. We did not attribute weight to allegations which appeared to be unsubstantiated, or little more than rumour or innuendo. We take as an example the allegations of widespread hacking of the Uber computers. When this point was directly put to Uber they gave a very clear explanation that they had not been hacked and an explanation of where the concerns had arisen. We were satisfied with the explanation and no one challenged it. It is essential that the Panel does not rely on issues which are not properly evidenced in making our decision.
- A number of the issues raised fell outside our remit in determining the application before us. These include comments made about foreign jurisdictions. We considered that the issue of surge pricing is primarily an economic consideration and not relevant to the test of 'fit and proper'. The Panel considered that 'economic' considerations would only be relevant where it went to the question of public safety. There may be a theoretical basis linking the two, but we were not satisfied that there was any persuasive evidence before us that there was any realistic causal link.
- The Panel also noted that issues in relation to the status of metering had been determined recently by the High Court.
- That in terms of certain matters like taxes and information processing that these are properly the remit of the relevant public bodies. No evidence was put before us that action had been taken in consequences of breaches of the rules of these bodies so as to evidence that Uber were unfit.

- Much reference was made to the conduct of drivers associated with Uber. We did not see any evidence that created a sufficient nexus of responsibility of the alleged behaviour of drivers to the actions of Uber, and noted that some of what was put to the Panel were no more than allegations.
- It was suggested that data storage by Uber was not secure. The Panel were reassured by the responses given by the applicant in relation to the collection and storage of data, noting that data would be processed in Brighton and that robust measures were in place to safeguard personal information collected. Storage was elsewhere – we believe outside of the UK.
- Issues were raised in relation to the approach of Uber to assuring that their drivers are meeting all regulatory requirements. We were reassured by Uber's explanation that measures would be undertaken to ensure that prior to engagement to their "platform" all prospective drivers have submitted relevant and up to date documentation, and that all information received would be processed in the city of Brighton and Hove. Further we were told that Uber would only use drivers already licenced by Brighton and Hove, or those that will in due course be licenced by this authority.

We distilled the objections to several central themes:

1. What is Uber?: We felt we had a good enough explanation and understanding of the functioning of the service
2. Disability issues: The Panel had concerns in relation to the provision of wheel chair accessible vehicles (WAV) but was also re-assured by the fact that the applicants detailed the arrangements in place for passengers who were blind or deaf, and their willingness to meet all of the conditions required of other operators as set out in the 'Blue Book'. The lack of clarity around WAV is important in terms of 'the level playing ground' principal, which was deemed important by all parties and has had some impact on our decision ( please see below). It is important to contextualise this. Brighton and Hove is proud of the strides it has made to support its public sector equalities duties. This could not have been achieved without the strong commitment of the established *large* operators. The Panel noted that the small operators do not (or more correctly can not) provide the same high level of WAV's that the other operators do. It would be inconsistent to expect Uber to match the established operators at the outset, but as they grow we would expect that this becomes a greater responsibility. The Panel considered that this issue related to working practice and the Blue Book, and to that extent was a relevant consideration.
3. Economic factors: Issues such as surge pricing were referred to the Panel, however we considered that these are economic decisions which were not demonstrated to be relevant to consideration as to the 'fit and proper' test.

4. Direct communication with Uber: It was suggested that the lack of a telephone number meant that passengers were unable to communicate properly with the Operator. The Panel accepted this was a relevant concern. The explanation provided as to the utility of the App in this respect satisfied us that this was a satisfactory digital alternative which did not breach the 'fit and proper' test.
5. Suggestions that there was evidence that Uber drivers have been known to drive without valid insurance: This would undoubtedly be a relevant consideration. However the Panel were satisfied with the assurances provided by Uber on this issue.
6. Data Protection (as referred to above): We were satisfied with the explanations given, and that there was not proper evidence that any breaches of data security referred to were attributable to Uber. We also note above the remit for data control issues sits properly with the Information commissioner and we are told that the commissioner is satisfied.
7. Taxi meters: This issue has recently been adjudicated and dealt with by the High Court.
8. Inexperience of Uber as an operator: This was raised in some representations. This was not developed greatly, but notwithstanding the information provided the Panel have reservations regarding the Applicant's level of experience. The Panel considered that within the district of Brighton and Hove our operators operate to high standards, beyond the standards of many other areas. Uber have not operated in this city before. The Panel noted the increasing pace of licences being granted to Uber nationally. On the basis of the information received it seems that Uber have had approximately 20 new licences since March 2015. This means that they have a lot of new areas to manage and it appears many more are pending. It concerns us that for understandable reasons (specifically that without an operating licence there will at this stage inevitably be a degree of uncertainty) there is currently no available level of detail about how things will be developed – the number of drivers; where they will be obtained; how many Wheelchair Accessible Vehicles will be available in the fleet and so on. Whilst the Panel did not consider that these concerns were sufficient to refuse grant of a licence, the Panel were of the view that these considerations are relevant to the length of the licence granted. This is considered further below.

### The Decision

**The Panel are satisfied that for the reasons given Uber meet the statutory test, being fit and proper to hold an operator's licence.**

The Panel considered the length of the licence to be granted. The Panel recognised that with the introduction of the new Deregulation Act 2015 nineteen days prior to the Panel hearing, there is an expectation that from 1 October 2015 licences would be ordinarily for a period of 5 years, although at the time of the application the expectation of Uber would have been that they would be granted a one year licence, as this had always been our practice in the city.

Following the Deregulation Act 2015 the usual expectation in relation to our established operators will be 5 year licences. These operators have a clear and established relationship of trust. They have worked with the licensing department and advanced issues in relation to disability, vulnerable people and child sexual exploitation. Uber may well attain the same levels of excellence, but at the moment this is untested. The Panel considered that the uncertainty identified in relation to the experience of the applicants in managing a fast expanding number of new operations in the UK; their inexperience in operating to the 'Blue Book' standards required in Brighton and Hove; and the issues around wheelchair accessible vehicles -which will only be resolved once they are operating- was relevant to the length of the licence period.

**The Panel conclude that in all the circumstances it is appropriate for a licence to be granted initially for a period of one year from the date at which the service is launched in the city. The licence is subject to the Applicant meeting the general principles, requirements and conditions set out in the current and any future revised edition of the 'Brighton and Hove Blue Handbook for Hackney Carriage and Private Hire, Drivers, Vehicles and Operators.'**

**Uber are to notify the licensing department of their launch date.**

This approach will provide Uber the opportunity to establish themselves and to allow our licensing officers to review their performance in that year. The presumption is that provided Uber have met the expectations of the licence over their first year of operation, in future they can ordinarily expect to be granted a licence for a longer period in line with other established operators.

The Panel remain conscious that there is a most uncomfortable fit between the traditional licensing regime and the march of modern technology. The numbers of people who attended and participated in this process showed the strength of feeling of those in the licenced vehicle trade and beyond. The Panel wishes to acknowledge and thank all those who took the time to attend the hearing and engage in this process. The meeting was conducted in a polite and considerate manner by all involved, despite the strength of feeling. It is to be hoped that the detail in this decision notification evidences the seriousness and care with which the Panel have addressed the task of determining this application fairly.

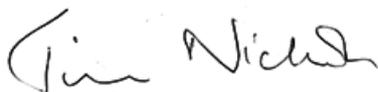
The minutes of the Panel will be available on the Council's web-site under the rubric 'Council and Democracy'.

Appeal Rights

S55(4) Any applicant aggrieved by the refusal of a district council to grant an operator's licence under this section, or by any conditions attached to the grant of such a licence, may appeal to a Magistrates' Court.

Any Appeal must be made to the Magistrates Court (Edward Street, Brighton) within 21 days of notification of this decision.

Yours faithfully

A handwritten signature in black ink that reads "Tim Nichols". The signature is written in a cursive style with a large initial 'T' and 'N'.

Tim Nichols  
Head of Regulatory Services