

BRIGHTON & HOVE CITY COUNCIL
LICENSING PANEL (NON LICENSING ACT 2003 FUNCTIONS)

10.00am 19 OCTOBER 2015

COMMITTEE ROOM 2, BRIGHTON TOWN HALL

MINUTES

Present: Councillors; Marsh (Chair), Simson and Deane

Officers: Jean Cranford, Quality & Projects Manager; Simon Court, Senior Solicitor, Housing & Litigation; Rebecca Sidell Lawyer; Jim Whitelegg, Senior Environmental Health Officer; Martin Seymour, Hackney Carriage Officer and Penny Jennings, Democratic Services Officer

PART ONE

5 TO APPOINT A CHAIR FOR THE MEETING

5.1 Councillor Marsh was appointed Chair for the meeting.

6 PROCEDURAL BUSINESS

6(a) Declaration of Substitutes

6.1 There were none.

6(b) Declarations of Interest

6.2 There were none.

6(c) Exclusion of Press and Public

6.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

6.4 **RESOLVED** - That the press and public are not excluded from the meeting.

7 APPLICATION FOR AN OPERATOR LICENCE APPLICATION UNDER THE TAXI AND PRIVATE HIRE VEHICLE LEGISLATION: UBER BRITANNIA LTD

- 7.1 The Committee considered a report of the Director of Public Health requesting that they determine an application received from UBER Britannia Ltd for an Operator's Licence under the Taxi and Private Hire Vehicle (PHV) legislation of the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act).
- 7.2 The Chair, Councillor Marsh welcomed those who were in attendance and explained the process which would be followed, with each party being permitted to speak according to the order in which their representation appeared in the circulated paperwork. The Chair went on to explain that various parties had indicated that they wished to film the proceedings, she was happy to permit that this provided this did not impede the business of the meeting. Each of the parties intending to film were asked to identify themselves. Throughout the course of the meeting those filming did change and on each occasion they were asked to identify themselves. The Chair explained that the anonymous representations received (pages 15,16) would be disregarded by the Panel, all of the other representations would be considered by the Panel when they were making their decision, as would information received that day, questions asked and responses given would also be taken account of by the Panel when they made their final deliberations. The Chair, Councillor Marsh, confirmed that all who had made representations and wished to speak would have the opportunity to do so. When all representations had been heard and all parties had made their final submissions the Panel would retire to consider their decision. Councillor Marsh went on to explain that the decision would not announced that day, however, all parties would be notified of their decision as soon as it was practicable to do so.
- 7.3 Each of the Panel Members and the officers in attendance having introduced themselves, each of those who had made representations and wished to speak introduced themselves. Mr David Wilson was in attendance on behalf of CAUTION (Campaign Against Unlawful Taxis in our Nation. Mr John Streeter was in attendance on behalf of the Brighton and Hove licensed Hackney Carriage taxi trade and Brighton & Hove Streamline Ltd. Councillor Mary Mears was in attendance to speak to her letters of objection in her capacity as a senior ward councillor who had knowledge of the licensed taxi trade in Brighton & Hove. Mr Martin Walker was in attendance in his capacity as the Operational Manager of Star Cars and Coaches based in Birmingham. Mr Matthew Wilson, Legal Director, Mr Andrew Byrne, Head of Public Policy and Mr Max Lines, General Manager were in attendance on behalf of UBER UK. Each of those present who had made representations and would be speaking to them identified the page(s) in the circulated papers at which their representations appeared.
- 7.4 The Chair reiterated that the two anonymous (and therefore invalid) representations would be disregarded by the Panel and would not be included in their considerations.

Officer Presentation

- 7.5 The Quality and Projects Manager, Jean Cranford gave a presentation in respect of the application which had been placed before the Panel. This application was for a new operators licence under the Taxi and Private Hire Vehicle (PHV) legislation: the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous

Provisions) Act 1976 (the 1976 Act). This was new and emerging technology and officers had no previous experience of such an application.

- 7.6 It was noted that Section 80 of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act) defined the terms “operate” and “operator licence”. “Operate meant in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle”. “Operator’s licence” meant a licence under Section 55 of the 1976 Act. Section 46(1)(d) made it clear that anyone acting as an operator must have an operators licence: “(d) no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence under S55 of this Act” and a local authority cannot grant a licence (s55(1)) “unless they are satisfied that the applicant is a fit and proper person to hold an operator’s licence”. So, in simple terms, a private hire operator is the person who takes a booking for a private hire vehicle and then dispatches a PHV driven by a licenced private hire driver (PHD) to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same authority.
- 7.7 Taxi and Private Hire Licensing (PHV) was not an area where there was much scope for self-regulation, although PVH operators had a key role in ensuring that the drivers they employed were fit and proper persons, as well as appropriately trained. That role went far beyond simply taking bookings and despatching vehicles. In the course of making and despatching a vehicle, the Private Hire Operator (PHO) would obtain significant amounts of personal information, for example it could be apparent when a holiday was being taken, which in dishonest hands could be valuable information. It was vital therefore that PHO’s were as trustworthy and reliable as a driver, notwithstanding their slightly remote role.
- 7.8 The Quality and Projects Manager went on to explain how the local licensing authority satisfied itself as to “fitness and propriety”. It had been suggested that the working test of fitness and propriety for PHOs would be “would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”
- 7.9 A licence was granted on the basis of a PHO being judged to be a fit and proper person but there was no overt mechanism to consider the suitability of those working for them. However, there was no reason why a condition could not be imposed (as was the case in Brighton and Hove) to ensure that a PHO undertook checks (for example enhanced DBS checks and training) on those they employed/used within their company to satisfy themselves that they were fit and proper to undertake that task. Any failure on the part of the PHO would have serious implications on their own deemed fitness and propriety. This responsibility was particularly important in the context of the Deregulation Bill whereby operators would be able to seek to pass on a booking, although the first operator would always retain overall responsibility for its fulfilment. Brighton and Hove City Council intended to enhance this responsibility by placing conditions on an operator’s licence requiring them to set out how they would handle sub- contracting and ensure consumer protection.
- 7.10 All hackney carriage and private hire vehicles in Brighton and Hove were fitted with CCTV cameras to protect public safety, this might not be the case in vehicles licensed in neighbouring authorities. Licensing authorities had responsibility for ensuring that the

public travelled in safe well maintained vehicles driven by competent drivers, as well as providing a fair and reasonable service for the taxi PVH trade. There were no statutory timescales or performances measures for taxi PHV licensing unlike some other licensing regimes. Although it was not a statutory requirement, all private hire vehicles in Brighton and Hove were fitted with a meter and the fares were regulated in line with fares charged by hackney carriages. Consumers were protected as fares were advertised and predictable, it was understood Uber did not use this method.

- 7.11 The Significant Unmet Demand survey for 2015 had sought details regarding the proportion of wheelchair accessible vehicles WAVs. The present WAV proportions had increased year on year over the previous 3-5 years. A total of thirteen representations had been received from local businesses, trade unions, trade associations and from a councillor and had expressed concerns relating to “fitness and propriety”. The Quality and Projects Manager also made reference to the relevant extracts from the existing Blue Handbook for Hackney Carriage and Private Hire Drivers, Vehicles and Operators (The Blue Book) which were considered germane to consideration of this application and which were referred to in the circulated report.

Legal Position as set out by the Legal Adviser to the Licensing Authority

- 7.12 The Senior Solicitor, Housing and Litigation, Simon Court referred to the detailed and lengthy advice which he had set out in the circulated report. The primary test was whether an operator was a fit and proper person or the alternate definition. This test was usually applied to the applicant operator and not normally to any drivers who may be employed by them. Individual drivers would have to meet their own test to obtain a licence. Case law and Counsels opinion (relating to drivers and the applicability of the fit and proper test) confirmed that for any piece of evidence to be used it must go above speculation rumour or innuendo. There needed to be a strong basis for taking in to account any allegation of misbehaviour or inappropriate actions.
- 7.13 Multiple representations had been made complaining about behaviour in foreign jurisdictions, both across Europe and in the USA. Neither of those areas were applicable to the Panel’s determination. This was in part because those operations would fall within a different licencing regime and statutory framework and also the Panel were required to determine the application based on facts known to it. On the basis of research carried out by the council’s own legal department whilst there might be many pending applications, none as far as they could see have been determined and so there were no findings which could be utilised definitively within the test framework. Even if such findings were to be made they might well not be applicable within the domestic statutory framework.
- 7.14 In terms of domestic challenges the High Court had made their determination late the previous week and was noted. It’s did not impact on the Panel’s role in determining the application as it had not had the impact of making the applicant not fit and proper. Tax & VAT; had also been referred to along with the accompanying letters from senior figures in HMRC. The HMRC had indicated that it was satisfied with the tax arrangements of the Uber parent company and as such this could not be considered grounds for refusal.
- 7.15 Allegations of nuisance at airports had also been made. However, no firm details had been provided or indications that this had been orchestrated by the operators and they

therefore remained unsubstantiated allegations, these were simply allegations. Any instances may have arisen as a result of action by individual drivers rather than due to the operator acting inappropriately.

- 7.16 There was a requirement under this authority's Blue Book for vehicles to be wheelchair accessible vehicles (WAVs), however, this was not fit and proper in the strictest sense. It could be viewed that not providing them means that there is some inroad into that concept and taken with other factors may have a small relevance. It is noted that any new operator was in any event generally given a window of time to grow their business before a quota of WAV's are deemed necessary. It would be unreasonable if this was common policy not to give the same. Concerns had been raised over insurance provision with allegedly the possibility of obtaining work with Uber on the basis of false documents. It was understood that this has been addressed in two regards – the first is the availability of insurance by Uber themselves and the second was a tightening up of the application procedures. This could be clarified with Uber themselves. As this might also raise concerns as to whether driver status could be obtained by use of fraud reassurances could be sought as to the robustness of the checking process. Given the definition of fit and proper it is a reasonable question to ask as to what the checking and vetting process is and how it can be enhanced if this was felt to be necessary.
- 7.17 The meter issue had also been raised. In Brighton and Hove there was an agreement with all drivers in the private hire community that they would have meters. This was not strictly required under the law as this could be a privately negotiated arrangement between the contracting parties. The Uber model did not appear to fit comfortably with this and so there was at least in principal (dependant to a degree on the High Court decision) a departure from the blue book model in certain circumstances (some if not all Uber drivers may well be metered). It was questionable that this was a relevant factor within the fit and proper test, but could be a point of clarification. Concerns, had been raised about the licensing status of Uber, in particular attention had been drawn to s48 of the Local Government (Miscellaneous Provisions Act) 1972. It was unclear why reference had been made to this section as it related to drivers and not operators. The relevant sections were in fact sections 55 to 57 and these had been reproduced and their significance drawn out in the Legal Implications section of the circulated report.
- 7.18 Concerns had also been raised that Uber had been guilty of Data Protection breaches. However, the decisions lodged with the Office of the Information Commissioner had been reviewed and only one reference to Uber had been found. This related to a complaint that Transport for London had not responded to a request about Uber. It did not relate to Uber itself. Although a number of articles had appeared in the media, closer investigation had revealed that these had taken the form of hearsay and allegations rather than proven facts. As such, they needed to be treated with extreme caution. Numerous other authorities had licensed Uber.
- 7.19 In concluding it was explained that there was a presumption for grant unless it was determined that a person was not fit and proper. It should be noted that the licensing regime in Brighton and Hove was very stringent and was applied to other operators in the city. It would not be unreasonable therefore if the licensing authority considered Uber were fit and proper to use the bench mark that applied locally and to attach any conditions which were considered appropriate to any licence which was granted.

Representations**Mr Streeter – Brighton & Hove Streamline**

- 17.20 Mr Streeter spoke to his letter of representation in his capacity as Chairman of Brighton & Hove Streamline. Mr Streeter explained that whilst the trade had no objection to fair competition their main concerns related to the requirements of the “Blue Book” and the need to ensure that a “level playing field” approach ensured that all operators were required to meet and maintain the same high standards. Those engaged in the trade across the city had worked very hard over a number of years to improve service delivery and driver training and awareness. In consequence the bar was set very high and the city had a taxi service of which it could justifiably be very proud. Brighton and Hove Streamline and the licensed trade had worked well in concert with the council, the police and disabled groups and had spent a lot of money on ensuring that their drivers were fully and appropriately trained in relation to customer service, disability and equality issues and that this training was updated on a regular basis as appropriate.
- 17.21 Mr Streeter stated that he was anxious however that all providers should operate on a level playing field and that irrespective of the technology being used Uber should be required to comply with the same conditions as the other major operators. By doing so this would ensure that the high standards attained were maintained and that customer safety was protected.
- 17.22 The Chair, Councillor Marsh sought clarification regarding the make up of the existing taxi fleet and it was confirmed that the existing fleet was mixed and that currently there were around 100 WAV’s which represented approximately 32% of the fleet. Councillor Marsh stated that customers could be vulnerable or have a range of disabilities including mental health issues other than being wheelchair bound. It was confirmed that these other variables were covered as part of the training process. All drivers had to undertake DBS security checks and if concerns were highlighted either in terms of behaviours or health these were dealt with and reported to the licensing authority as appropriate.
- 17.23 Councillor Deane sought further clarification regarding composition of the existing fleet and detail in respect of the in depth training provided. Mr Streeter explained that when customers had special/specific requirements these needed to be notified at the time a booking was made in. In the case of the larger operators this did not give rise to lengthy waits. It was possible to pick up vehicles from ranks and smaller operators were below the deminimus levels required.
- 17.24 Councillor Simson sought information regarding measures put into place to protect customers and to ensure that information provided had been properly verified. It was explained that all drivers had to comply with the requirements set out in the “Blue Book” and that the arrangements for verification/collection of information set out in the operating manual protected both drivers and passengers. Councillor Simson referred to the fact that a number of concerns had been expressed in relation to safety issues, it was important for the Panel to have a clear understanding of the current arrangements and processes. In answer to further questions by all of the parties, The Hackney Carriage Officer, Martin Seymour, explained that the existing “Blue Book” was in the process of being reviewed and updated. However, as it stood when/if new operators commenced their operations (this had not occurred for some years), there would be a

period to meet compliance with such issues as provision of WAVs. Generally, licences were issued for a 5 year period, however in the past this had been for a period initially of one year, following which in the absence of any problems a licence was then granted subsequently for a longer period.

Councillor Mary Mears

- 17.25 Councillor Mary Mears then gave her submission stating that she had concerns regarding the fact that concerns had been voiced regarding the manner in which Uber operated world-wide which would indicate that they were not fit and proper persons, particularly when it came to behaviour towards vulnerable people. Uber needed to be able to evidence their equalities policy and practicality of use for disabled users etc., but and also in terms of their business model (surge pricing for example). By virtue of the fact that they referred to themselves as a third party taxi booking service and not a transport provider that of itself rang alarm bells with her. Furthermore, there were issues in respect of the collection and storage of CCTV data. Vehicles in Brighton and Hove were required to have CCTTV fitted and the manner in which information collected was collected and stored was proscribed by condition. Assurances were required from Uber as to how this would operate in relation to them.
- 17.26 Councillor Mears concurred with Mr Streeter in agreeing that the service provided in Brighton was unique one with a reputation of which all were rightly and justifiably proud, one which had been achieved as the result of hard work and collaboration by all parties over a number of years. Anything which might impact negatively on that should be resisted in her view.
- 17.27 Councillor Mears stated that whilst she had no objections to fair competition, she was in agreement all should operate on a level playing field and all operators should meet the same requirements.

Mr David Wilson -

- 17.28 Mr David Wilson spoke in response to the representation that had been put forward on behalf of the Campaign Against Unlawful Taxis in our Nation. Mr Wilson referred to the advice received from Square One Law. There had been a long history of abuse and sharp practice in the USA and there were fears that the same issues would arise in the UK. The manner in which this business operated in London and elsewhere had given rise to concern. It was debateable whether as an arms length third party conduit Uber could be considered as an operator at all. Mr Wilson contended that Uber were not an operator and on that basis an application should not be considered. The Chair stated that as an application had been submitted the Panel were required to determine it. The Legal Adviser to the Panel confirmed that was the case.
- 17.29 Mr Wilson outlined and elaborated on the various issues raised by Square One. Uber's own publicity claimed that it put the customer directly in touch with the driver and it was considered a moot point whether this fell within the terms of Uber's own licence as it equated to a member of the public standing next to a private hire vehicle and texting a driver and asking to be picked up. There were also grave concerns in relation to the possibility of cross border trade, use of non area licensed vehicles and regulatory breaches, failure to comply with disability discrimination legislation or to operate a

competitive/fair advertising policy. The manner in which representative journeys shown was misleading and the level of fares which could arise as a result of their policy of surge pricing.

- 7.30 Mr Wilson stated that the Campaign Against Unlawful Taxis in Our Nations was concerned by the way in which Uber operated, its blatant disregard for rules and regulations coupled with its patterns of aggressive anti-competitive behaviour in other jurisdictions. This indicated that it was a large corporation prepared to operate in an illegal and predatory manner in order to gain a rapid market share.
- 7.31 Mr Wilson had the opportunity to ask questions of Uber in relation to their business model and mode of operation. Members of the Panel also asked questions of the team in attendance on behalf of Uber and for clarity and ease of reference rather this has been set out in the discussion and debate section set out below. Mr Wilson referred to the fact in his view the fact that storage and exchange of information was "cloud" based (outside the UK) this raised concerns regarding the security of information, indeed there had been instances of UBER being hacked which of itself could result in major issues for their customers due to personal information being leaked. Mr Byrne stated that this was not the case, all of the issues raised were dealt with as part of Uber's own submission in support of their application.

Mr Martin Walker

- 7.32 Mr Walker spoke to his submission which had been made in the form of a witness statement. He was Operations Manager of Star Cars and Coaches based in Birmingham. He referred to the fact that when granted permission by the Council there Uber had not been required to meet a number of the conditions required by other operators. A number of instances of fraud had been as it was believed that some drivers had been admitted to the Uber platform on the basis of false credentials, there were grave concerns that the Uber system had been unable to respond to this. In one instance a copy of the front of a cornflake packet had been uploaded rather than a copy of an applicants driving licence. This did not appear to have been picked up upon by Uber. Mr Byrne refuted this stating that this abuse had been identified and the image removed immediately. Anyone who did not submit up to date and valid licence details and proof that the relevant CRB checks had been carried out was not admitted to the Uber platform and permitted to work for them. Customer complaints/negative feedback would also result in a driver being removed.
- 7.32 Mr Walker went on to explain that Uber had been licensed in the neighbouring Solihull area with further applications pending in other neighbouring authorities. The Uber driver app told drivers where the greater earning potential lay, irrespective of council boundaries. In Birmingham significant numbers of Uber Solihull based licensed vehicles had been observed parked up available for hire in Birmingham city centre. In Birmingham licensed operators were not permitted to accept a booking without a specified destination. Uber's app however, allowed customers to book without giving a specified destination. The Apple Watch application did not have the facility to ask for a destination.
- 7.33 Whilst noting what was said which would be considered the Chair, it was important to note that that the constraints any operator in Brighton & Hove would need to meet would

confirm to those set locally, the Panel had been advised that these had been set at a very high level. The Senior Solicitor, Simon Court, stated that current advice indicated that Uber had not been operating illegally and that the Panel would need to give weight to that when making their determination.

Uber Britannia Ltd and Responses to Questions/Queries

- 7.34 The Team from Uber introduced themselves and Mr Byrne stressed that Uber was not asking for special consideration confirming that they were willing to meet the same requirements as other operators in Brighton & Hove.
- 7.35 The Chair, Councillor Marsh sought confirmation regarding the Uber operating model. It was confirmed that vehicles could not be called up from a rank but had to be ordered from a smart phone to which the Uber app had been downloaded and was a cashless transaction. It was recognised that this was a niche market which provided alternative option for younger customers. It answered an identified need but would not appeal to all.
- 7.36 Councillors Deane and Simson referred to the arrangements to be made when calling up an Uber vehicle. It was confirmed that vehicles could not be ordered in advance. In terms of the requirements to conform with Disability Discrimination Act it was explained that although as a new operator Uber would not have wheelchair accessible vehicles, (WAVs), they would, once they began operation and reached the level at which that was required. Although they did not currently meet WAV requirements and did not have wheelchair accessible vehicles their drivers were required to meet all necessary equalities and safety requirements and they were able to meet other disability requirements, the arrangements available for those who were blind/partially sighted were cited.
- 7.37 Councillor Deane requested to know what arrangements would be in place to ensure that vulnerable customers would be protected. It was explained that when a call was logged customers would be advised of the waiting time and advised of the likely cost for their journey. Once the vehicle was on its way they would receive a photograph of the driver who was going to pick them up. Any potential driver seeking to be admitted to the Uber platform was required to meet rigorous requirements and were required to present those documents in person.
- 7.38 Customers had the opportunity to rate their experience and negative feedback would result in removal from their platform, Uber Britannia were a separate entity from other operators elsewhere in Europe and in the US and would meet all of the requirements here.
- 7.39 Mr Byrne confirmed in response to questions by Councillor Marsh, the Chair, that Uber would have a dedicated office in Brighton & Hove and that all bookings made in the city would be processed there.
- 7.40 It was also confirmed that assertions that Uber's information was not securely processed and stored were incorrect as were claims that Uber had been hacked, it had not. BA and other service providers whose customers had Uber accounts had been hacked, Uber itself had not been hacked nor it's customers personal information compromised. It was explained that following a transaction customer information would

be retained for a fixed period and then deleted. It was confirmed that a dedicated telephone number would be provided for customer use in the event of a query arising.

- 7.42 Councillor Simson referred to Uber's surge pricing policy and the allegations which had been made regarding how this operated and how customers had could receive an inordinately high bill at such times. It was explained that this only operated during periods of very high demand. This was fully explained and anyone wishing to travel whilst surge pricing was in operation would be quoted a price for their journey when making their booking, so were able to make an informed decision and were free to cancel.

Closing Submissions

- 7.43 As no further matters were raised, the Quality and Projects Manager, Jean Cranford, gave her closing submission, confirming that the Panel were being asked to determine the application before them and to decide whether or not to grant a New Operators Licence under the Taxi and Private Hire Vehicles (PHV) legislation: The Town Police Clauses Act 1847 (the 1987 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act, Appendix A: of the circulated papers included the application form. This was new and emerging technology, however the Panel decision would turn largely around whether in their view the applicants were "fit and proper" persons.
- 7.44 Mr Streeter gave his closing submission stating that he had little to add to his earlier submission other than to reiterate his earlier comments and concerns that any operator needed to comply with the same conditions as any others in the city.
- 7.45 Councillor Mears also confirmed that she wished to stress her earlier remarks in respect of the reputation of taxi operators within the city. The bar was set very high and those currently operating in the city needed to comply with rigorous conditions as standard, all should meet those standards and conditions should be applied to all operators equally. It was important to ensure that consistent standards were maintained.
- 7.46 Mr Wilson concluded by stating that he had grave concerns regarding the operating model used by Uber, he did not feel that as their data in relation to processing and storage of information was kept in a "cloud" that they met UK operational requirements. He considered that Uber did not meet the requirements of the term "operate" as defined by S 80 of The Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act). The Senior Solicitor, Housing & Litigation, Simon Court stated that further clarification could be sought on this point and could be considered as part of the Panel's decision making process.
- 7.47 Mr Wilson re-iterated that he did not consider that the application should be considered at all on the basis that by their reliance on an App to arrange and process bookings UBER were not operating within the licensing area, as per the definition set out in section 80 of the 1976 Act since the server which facilitated the App was located outside. The Chair stated as this point had been raised without advance warning as part of his closing statement represented a variation on the points he had made previously. Mr Wilson stated that this point had only occurred to him whilst making his closing remarks, The Chair, Councillor Marsh, confirmed that further legal advice would be sought on this point and would be taken account of by the Panel when determining the application.

7.48 Mr Walker then gave his witness statement stating that based on his experience in the Birmingham area he had grave concerns in respect of their business practices. Notwithstanding the reassurances which had been given he considered that if permitted to operate in the city that operation would have a deeply negative impact on the trade overall. Drivers working for Uber had been poached from elsewhere it seemed fair to assume that drivers working for Uber were also working for other tradition operators at the same time, without necessarily the knowledge or permission of either operator. Because of their practice of offering incentives and free/cut price fares to encourage initial trade, but in operating surge pricing when vehicles were in short supply, over a relatively short period of time fares in Birmingham had risen. If permitted to operate they were likely to decimate the existing trade.

The Panel's Decision

7.49 The Panel then withdrew to make their decision. The Chair, Councillor Marsh, explained that having made their deliberations the Panel would then ensure that all of the interested parties (those who had made representations at the hearing) would be advised of the decision and the rationale for it as soon as it was practicable to do so. The Panel's conclusions and decision including the thought process behind it and their preliminary considerations are set out below.

In Conclusion – Preliminaries

7.50 As a preliminary matter, the Panel considered that it was important for them to give thought to whether Uber met the requirements of the term "Operate(or)" as defined by S80 of Local Government (Miscellaneous Provisions) Act 1976 (The 1976 Act).The Panel considered as a preliminary legal issue the point that had been raised without advance warning by Mr Wilson, Company Secretary of the Campaign Against Unlawful Taxis in Our Nation (CAUTION) in oral submissions at the hearing. This had been raised as a new matter during Mr Wilson's closing submission.

7.51 The Panel sought legal advice to review the cases referred to and in addition looked at a number of other factors; the recent High Court decision involving Transport for London. From this they took encouragement that the High Court were also of the view that the legislation and the technology were not an easy fit. The case of Kingston Upon Hull City Council v Wilson (1995) was specifically referred to. Given the advice received and decision below the Panel did not believe that case established that Uber were not meeting the criteria.

7.52 In essence it had been suggested to the Panel that the application should not be considered at all on the basis that by the reliance on the App to arrange and process bookings UBER were not operating within the licensing area, as per the definition in s80 of the 1976 Act, since the server which facilitated the App was outside of the UK. The Panel had requested and considered legal advice. The Panel was in agreement 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 did 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 was that UBER provided a connection between drivers and passengers in the licenced area and that in the Panel's

view amounted to a provision under the Act. The Panel had therefore concluded that they could properly be considered to be an operator under the Act, and the Panel had then gone on to consider the requirements as to their suitability to be granted a licence.

The legislation stated 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.]¹

(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.”

In Conclusion - Representations

- 7.54 The Chair, Councillor Marsh, stated that the Panel had considered and listened carefully to all the matters raised both in the submitted representations and by those who had spoken in person at the meeting. The Chair stated that she wished to thank all of those who had taken the time and trouble to attend especially as many had travelled some considerable distance.
- 7.55 The legislation made it clear, that the issue for the Panel to consider was whether Uber were “fit and proper”. The principal aim of the test to ensure public safety was paramount. The legislation sat primarily with the Local Government (Miscellaneous Provisions Act 1976 (set out in part above). The Panel noted the relevance of the Deregulation Act 2015 and that had impinged in part on their decision making, in particular in relation to the length of any licence and was reflected in their decision set out below.
- 7.56 Additionally and quite rightly in their view the Panel' attention had been drawn to the 3rd Edition of the 'Blue book', a document produced by Brighton and Hove City Council. Both the applicant and those making representations had been in agreement that each should operate on a 'level playing ground' and so the Blue Book should be applicable to them both. It was noted and the Panel wished to reiterate that the Blue Book was currently in the process of revision in consequence there could be changes (particularly in the area of protection of the vulnerable), if so, these changes would be applied universally. Clearly, each case must be looked at on its own merits taking into account its own facts and circumstances.

7.57 In addition to the normal meaning of 'fit and proper' the Panel had been referred to additional definitions. These had been set out by Mr Court, their legal adviser during the course of the hearing and not objected too. The Panel were entitled to consider whether they would want a loved one to get in to a licensed vehicle. This related more to drivers than operators in the Panel's view. Also, whether they would want information of a private nature to be in the hands of a driver/operator, for instance holiday plans. Given the allegations around hacking this was of particular use. The guiding principle for the Panel had been that they were an administrative decision making body and they were very conscious of the principles of natural justice and the need to deal with all parties in a fair and even minded manner.

In Conclusion - The Issues

7.58 The Chair stated that the Panel had been provided with a large volume of material and a wide range of issues had been raised with them. The Panel did not believe that it would be helpful to go through the documents page by page and but rather, to highlight the general principles considered, namely:

- The Panel noted that a number of allegations had been made, many of which were unsubstantiated, these were noted but the Panel considered that many were little more than rumour or innuendo. For example, the allegations of widespread hacking of the Uber computers. When this point had been put directly to Uber they had given a very clear explanation that they had not been hacked and had explained where those concerns had arisen from. The Panel were satisfied with that explanation and no one challenged it. This demonstrated however the difficulty with relying upon issues with no evidential background.
- A number of the issues raised fell outside the Panel's remit in determining the application before them. These included comments made about foreign jurisdictions. Also, the issue of surge pricing was primarily an economic consideration and not relevant to the test of 'fit and proper'. Indeed, any 'economic' consideration would only be relevant where it went to the question of public safety. The Panel had seen nothing that linked public safety with economic considerations. Whilst there might be a theoretical basis linking the two, the Panel were not satisfied that any persuasive evidence had been placed before it 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.
- In terms of certain matters like taxes and information processing these were properly the remit of the relevant public bodies. No evidence had been put before the Panel that action had been taken in consequences of breaches of the rules of these bodies.
- Much reference was made to the conduct of drivers associated with Uber. The Panel had taken the view that it was not normal policy to punish the operators for behaviour of drivers. The Panel had seen no evidence that created a sufficient nexus of responsibility of the alleged behaviour (and often it had been no more than that) of drivers to the actions of Uber.

- 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, the Panel believed that this was in the Netherlands.
- Also that measures which would be undertaken to ensure prior to engagement to their “platform” all prospective drivers had submitted relevant and up to date documentation and that all information received would be processed in the city of Brighton and Hove . Further that they would only use drivers already licenced by Brighton or Hove or those that would in due course be licenced by the authority.

7.59 The Panel considered that the remaining representations/concerns could be distilled to several central themes:

1. What is Uber – The Panel felt that they had been given a good enough explanation of this;
2. Disability issues. The Panel had concerns in relation to the provision of wheel chair accessible vehicles (WAV) but were 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 was important in terms of ‘the level playing ground’ principle, which was deemed important by all parties and this had had some impact on its decision. It was important to contextualise this. Brighton and Hove was proud of the strides it had 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 did not (or more correctly could not) provide the same high level of WAV’s that the other operators did. It would be inconsistent to expect Uber to match the established operators at the outset, but as they grew the Panel would expect that this would become a greater responsibility. Whilst, it could be argued that this had nothing to do with the fit and proper test, clearly, it was is a factor both in working practice and the Blue Book. Given the parties all accepted the Blue Book as an important document we have allowed this to influence us to an extent.
3. Economic factors such as surge pricing, had been explained but these are economic decisions and not a matter for consideration by the Panel as they did not relate to public safety as presented to them.
4. Communication/telephone numbers. This could be an issue, but the explanation given to the Panel of what the alternative would be in this modern digital world, was enough to satisfy it that this did not breach fit and proper.
5. Insurance – this would undoubtedly be an issue, but the Panel were satisfied with the responses they had received in response to questions relating to this issue.
6. Data Protection – The Panel were satisfied with the explanations given and that there had not been any breaches of data security attributable to Uber. The Panel

also noted that the remit for data control issues sat properly with the Information Commissioner and the Panel had been told that the Commissioner is satisfied with the arrangements put into place.

7. The taxi meters issue has been dealt with by the recent High Court ruling.
8. Lack of experience had been raised as a concern in some representations. This had not been expanded upon in any depth, but notwithstanding the information provided to them the Panel themselves had reservations regarding the applicant's level of experience. Uber had not operated in Brighton & Hove before and the Panel considered that level and standard of service provided by operators in the city was extremely high, above and beyond that attained in many other areas. The Panel also noted the increasing pace of licences being granted. On the basis of the information received it appeared that Uber had been granted approximately 20 new licences since March 2015. This meant that they had a lot of new areas to keep an eye with more applications pending. The Panel were concerned that for very understandable reasons there is no available level of detail about how things would be developed such as the number of drivers; where they will be obtained from; how many WAVs and so on. The Panel understood the operating difficulties when applicants did not have a licence and were making their first application. Whilst the Panel did not consider that these concerns were sufficient to refuse grant of a licence they were of the view that it would be both appropriate and consistent with the conditions imposed on new operators in the past in line the requirements of the "Blue Book" (currently in the process of being revised), for a licence to be granted initially for a period of one year from the date at which the service was launched in the city and subject to the applicant meeting the requirements of all operators as set out in the "Blue Book". Established operators following the Deregulation Act were being given 5 year licences. These had a clear and established relationship of trust could demonstrate and had a track record which evidenced that they had taken on board and advanced issues in relation to disability; vulnerable people and child sexual exploitation. Uber might well attain the same levels of excellence but could not show that to be the case at present.

7.60 The Panel's Decision

- 7.61 In conclusion, The Chair, Councillor Marsh reiterated that the Panel recognised that whilst the new Deregulation Act created an expectation that licences would be for 5 years but this had only just come into force and the expectation when the applicants had applied for the licence would have been be that they would be granted a one year licence as this had always been this authority's practice.
- 7.62 Given the uncertainties around the experience of the applicants and unresolved issues around for instance WAV, the Panel were of the view that in this case it would be appropriate for them to grant the licence for one year (commencing on the date of launch of Uber in Brighton – the applicants to notify the licensing authority of that date) in order that they were given the opportunity to establish themselves and to allow licensing officers to review what had taken place in that year. The presumption being that they would then be granted a licence in line with other operators.

- 7.63 The Panel did not consider it was unreasonable for there be this one small departure, from the 'standard' situation (noting that the standard situation was only 18 days old at the time of hearing). The licence fee would be adjusted pro rata so that there would be no additional financial burden. Assuming that there were no issues of concern it was envisaged that there should be a smooth transition from a 1 year to a 5 year licence. If there were any problems hopefully, the applicants would work together with officers to resolve them.
- 7.64 The licence would be granted subject to compliance with all the routine and general conditions set out in the Blue book and the general principals set out in the blue book as is and as they may change once it is reviewed and republished as the Fourth edition.
- 7.65 The Chair, Councillor Marsh stated that the Panel wished once again to thank all those who had taken the time to attend the hearing. The representations made had been heard in a polite and considerate manner by all involved. The numbers of people who had attended showed the strength of feeling of those in the licenced vehicle trade.
- 7.66 The Panel were very conscious that at present there was a most uncomfortable fit between the traditional licencing regime and the march of modern technology.
- 7.67 **RESOLVED** – That a one year Licence be granted UBER Britannia Ltd, Tower Point, 44 North Road, Brighton to commence from the of launch of Uber in Brighton and Hove for the reasons set out above.

The meeting concluded at 4.45pm

Signed

Chairman

Dated this

day of