

Uber Britannia Limited (UBL)
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Date: 1st May 2018

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Dear Sir or Madam:

RE: Licensing Panel (Non Licensing Act 2003 functions) hearing held on Monday 23rd April 2018 in respect of the application for the renewal of a Private Hire Operator licence under Section 55, Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 for Uber Britannia Ltd. (UBL). Notification of the Determination of Panel.

The Panel has read the report and all the documents appended to it including all the written representations and submissions. We have listened carefully to all the submissions made at the hearing.

The Panel considered the legislative framework in respect of which the application by UBL was made, set out below.

Legislative framework: Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act")

The Act 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 [-]

(a) that the applicant is a fit and proper person to hold an operator's licence; and

(b) if the applicant is an individual, that the applicant is not disqualified by reason of the applicant's immigration status from operating a private hire vehicle.

(2) [Subject to section 55ZA, 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.'

S.62 of the 1976 Act also applies, and provides:

'(1) Notwithstanding anything in this Part of this Act a district council may suspend or revoke, or (on application therefor under section 55 of this Act) refuse to renew an operator's licence on any of the following grounds:—

(a) any offence under, or non-compliance with, the provisions of this Part of this Act;

(b) any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence;

(c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; [...]

(ca) that the operator has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or

(d) any other reasonable cause.

(2) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the operator notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal.

(3) Any operator aggrieved by a decision of a district council under this section may appeal to a magistrates' court.'

The key consideration for the Panel is therefore whether UBL are 'fit and proper' to hold an operator's licence. The principal aim of the test is to ensure that public safety is paramount.

The Panel has looked at this application on its own merits taking into account the specific facts and circumstances which relate to this application, and the particular circumstances prevailing in Brighton & Hove. In addition the Panel has considered the legislation outlined above and the objectives contained within the Blue Handbook for Hackney Carriage and Private Hire Drivers, Vehicles and Operators (The 'Blue Book') referred to below.

Blue Book Licensing Objectives:

'The Council will adopt and carry out its Hackney Carriage and Private Hire licensing functions with a view to promoting the following licensing objectives:-

- The prevention of crime and disorder, safeguarding of children & the vulnerable and the protection of the public.
- The safety and health of the public and drivers.
- Vehicle safety, comfort and access.
- Encouraging environmental sustainability.

In promoting these licensing objectives, Brighton & Hove City Council ('the Council') will expect to see licence holders and applicants continuously demonstrate they can meet or exceed specifications set by the council in the four licensing objectives and the objectives will be taken into account by the Council when making decisions.'

The Brighton & Hove context.

The social and economic background of Brighton & Hove is important both to the context to the Blue Book but also in terms of how safeguarding and regulatory responsibilities are undertaken. The City has some significant social issues and high levels of vulnerabilities, which include; higher than national prevalence of people with mental health issues; problematic drug and alcohol use and significantly above average rates of children in care and children in need.

The Council has endeavoured to take steps in relation to a range of issues to protect the City's vulnerable groups. We also have taken to the core of our work the lessons learnt in Rotherham, Rochdale and similar situations. This has led to wholesale revisions of the Blue Book to reflect the lessons learned.

All these factors make it imperative that the high regulatory standards set out in the Blue Book in relation to the taxi trade are adhered to and enforced in the City.

Consideration of Representations

The Panel would like to thank all of those who took the time and trouble to make written submissions or attend the hearing. We thank UBL and their Counsel for attending and making a thorough presentation and answering all of our questions.

The Panel has 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 we have focused on those issues we consider to be relevant to the issue of whether the applicant is a fit and proper person to hold an operator's licence pursuant to Sections 55 and 62 of the 1976 Act set out above.

The Decision

The Panel considers that Uber Britannia Limited (UBL) meets the statutory definition of an operator. The Panel noted the submissions on this point that were made by Counsel on behalf of those objecting to the application and those made on behalf of the applicant. The Panel considers the applicant to be an operator, as defined, for the reasons set out in paragraphs 8.2 to 8.5 in the report.

The Panel considered a number of other issues raised by those objecting to the application which the Panel found to carry very little or no evidential weight. These issues are addressed below:

- Sexual assault and sexual harassment in the USA, where the sole evidence was a newspaper report. The Panel accepted the submissions by Counsel for UBL on this point;
- Inappropriate driver routes - no evidence was put forward to support this allegation;
- Lack of insurance - no evidence was put forward to support this allegation;
- Drivers sleeping in their vehicles – the Panel took the view that it is advisable for any driver who is tired to take a rest;
- DBS checks and medical evidence – the Panel did not consider that issues around DBS checks or medical evidence are relevant as regards to the operation of UBL in Brighton & Hove, as we have our own systems in place and are satisfied with those;
- The Panel heard from Counsel for UBL about both Greyball and Ripley technology and find that there is no evidence to support any allegations of their misuse;
- The Panel noted that a 5 day appeal is scheduled in relation to an Uber application that was rejected by TfL. Many of the concerns raised in that case such as medical and DBS checks do not apply here in Brighton & Hove as there are different procedures in place. There is also a different legislative framework in London. As such the Panel has discounted the TfL situation for the purposes of this application;
- In relation to Wheelchair Accessible Vehicles (WAV vehicles) the Panel were clear that UBL are not in breach of the Blue Book requirements. We noted the offer by UBL to voluntarily go outside the Blue Book criteria by reducing from 100 vehicles to 80 the point at which 20% of the fleet have to be WAV vehicles.

The Panel does have significant concerns however about other matters raised at the Hearing and in the papers and these form the basis for our decision.

The Panel is not satisfied that UBL are a fit and proper person to hold an operator's licence pursuant to the 1976 Act for the reasons set out below. The decision of the Panel is therefore not to renew the operator's licence for UBL.

Reasons

1. Data Breach.

While the Panel acknowledges that UBL is a separate legal entity from other Uber companies, the Panel found that the practical reality is that the actions of other Uber companies clearly have a relevance to UBL. The Panel heard that data processing was conducted by Uber BV, a European arm of Uber. The Panel also heard how the management of the US arm of Uber has changed and it is clear on submissions of UBL that the line of authority runs ultimately to the US companies and that they are closely interlinked.

The Panel noted that there have been additional changes within the structure of UBL and that a range of non-executive directors have been appointed who have regulatory experience but not it seems within the private hire vehicle area.

Details of the circumstances of a significant data breach are contained in the papers and were addressed in the submission by UBL. The Panel did not learn of this breach until after the licence was renewed by officers on the 2nd November 2017.

It is clear and not disputed that the breach was covered up by company officers in America for at least a year. The applicant, UBL, accepts that this was a serious mistake on the part of the parent company and explained that a new CEO is in place with a new company ethos. UBL seeks to distance itself from the actions of the American company. However, in the Panel's view, Uber is a multi-national business with a distinct corporate culture which extends across national borders. We believe this incident, and in particular the failure to report the breach, reflects extremely badly on Uber as a whole, including UBL, and in our opinion renders them unfit to hold a licence.

Trustworthiness and integrity in holding and dealing with sensitive personal data should be a key characteristic of an operator and the Panel considers that in this respect UBL has fallen short of the standard required. We note the comments of the ICO dated 22nd November 2017, when they said "Uber's announcement about a concealed data breach last October raises huge concerns around its data protection policies and ethics." We also note that a week later on 29th November 2017 The ICO said " We would expect Uber to alert all those affected in the UK as soon as possible". We questioned two witnesses about what information they had had and they confirmed they had heard nothing from UBL. UBL did not provide us with any information detailing steps that they had taken to alert individual users of the App. We note the comments by the ICO dated 29th November:-

"On its own this information is unlikely to pose a direct threat to citizens. However, its use may make other scams, such as bogus emails or calls appear more credible. People should continue to be vigilant and follow the advice from the NCSC." Given this is a possible risk; we would have expected Uber to have taken more pro-active steps.

The Panel was not satisfied that the changes of management reported by UBL, which are relatively recent, were sufficient to provide reassurance that there would not be a repeat of the data breach. The Panel could not identify an additional licence term that would provide reassurance.

2. Commitment only to use Brighton & Hove licensed drivers, regulatory standards and enforcement concerns regarding out of town drivers.

At the original licence application before the Panel in October 2015, UBL gave a firm commitment to adhere to the standards set out in the Blue Book and further only to use Brighton & Hove licensed drivers. This is set out in the decision letter of the 23rd October 2015 and reflected in the minutes of the Panel. It was a critical factor in the decision to grant the licence. In 2016 that undertaking was repeated and set out in the decision letter of the 31st October 2016 which reiterated that the renewal was subject to Blue Book compliance and the commitment only to use Brighton & Hove drivers. At the renewal stage UBL had not yet launched in the City.

When UBL launched in Brighton & Hove, a large number of out of town Uber taxis, mainly those licensed by Transport for London (TfL), entered and operated in the City. This was an unexpected consequence of granting UBL the licence and has had a number of associated regulatory consequences and concerns. The high standards set out in the Blue Book do not apply to drivers and vehicles licensed elsewhere. Out of town taxis are often licensed with less stringent controls and conditions than those from the City. An important example is the presence of CCTV in taxis licensed in Brighton & Hove. This is a vital tool for the protection of residents and visitors and has provided crucial evidence in the investigation of complaints. It is not standard in other licensed areas.

There are enforcement difficulties for our officers in relation to out of town drivers in that they are unable to take swift and appropriate action if problems occur. The influx of TfL taxis into the City necessitated approaches to TfL in order to perform and seek agreement to joint enforcement operations.

In response to the above concerns, UBL created a Geofence area around the 'South East'. Initially this was warmly welcomed. However what has become apparent is that while TfL registered drivers are now absent from the City, there continues to be a large number of drivers not licenced locally operating in the City. This is as a direct consequence of the functioning of the Uber App. Therefore UBL have significantly increased the 'alternate' PHV market in the City. Despite the Council having repeatedly expressed concerns to UBL that their App reduces the Council's ability to perform our regulatory functions, UBL have not addressed this issue to our satisfaction.

What has particularly brought matters into focus is the UBL web site which sets out on one page a comparative table between Brighton & Hove and Lewes District Council. The comparison makes it clear that it is cheaper and quicker to register as a PHV driver in Lewes. One hundred and thirty applications to be licenced as a PHV driver were received between 15th February and 15th March according to Lewes District Council. The Panel's view was that these drivers will be likely to drive in Brighton & Hove.

The Panel noted the assertion by UBL that this website comparison was done at the drivers' request. The Panel was unimpressed by this assertion. The reality is that UBL has facilitated, whether intentionally or not, an increase of people applying for PHV driver licences outside of Brighton & Hove, which means the City is likely to be inundated with PHV vehicles and drivers operating using the Uber App who do so without meeting the stringent Brighton & Hove Blue Book standards.

In the Panel's view, large numbers of taxis operating in the City that do not meet the Blue Book standards puts the safety of residents and visitors at potential risk. The Panel considers that by operating in such a way as to cause this influx of out of town taxis, UBL breached the spirit of their written commitment only to use Brighton & Hove drivers. The Panel believes that UBL misled the Licensing Authority in this respect and that this goes to the definition of 'fit and proper' for the purpose of the 1976 Act.

The Panel notes that UBL do not accept that they have breached any undertaking and that out of town drivers are able to lawfully operate in the City. However, the Panel considers that the comparison webpage proactively encourages drivers to take the quicker and cheaper route to driving in Brighton & Hove in the knowledge that the safety and security measures that applied would be less stringent. UBL stated that they have been unable to recruit large numbers of Brighton & Hove drivers to their licence. The Panel's view is that recruitment to the Brighton & Hove City licence is undermined by

providing the comparison with Lewes above. We note there have been some incentives to drivers to register in Brighton and Hove, but that these have not proved sufficient.

The Panel had hoped that matters could be resolved by UBL putting forward a Geofence of Brighton & Hove. UBL said they would not do this due to the financial considerations of their drivers (and other issues, such as air quality). As UBL have indicated that they cannot / will not Geofence Brighton & Hove then the Panel cannot consider putting this forward as a condition or ask them to enter in to a voluntary arrangement.

For the reasons set out above, the members of the Panel unanimously decided that they are not satisfied that UBL are a fit and proper person to hold an operator's licence pursuant to the 1976 Act and the decision of the Panel is therefore not to renew the operator's licence for UBL.

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.

S62 (3) Any operator aggrieved by a decision of the district council under this section 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



Jackie O'Quinn
Chair of Licensing

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