



22/03/2018

Unite the Union wishes to object to the renewal of Uber's Private Hire Operator's Licence currently issued by Brighton & Hove City Council on the following basis.

This objection differs from our previous objection lodged at the last consideration of renewal in terms of the augmentation of recent information.

Firstly we should like to establish what we believe about Uber's operation locally;

UBER

Brighton & Hove City Council believe and "Uber" will contend, that the licensee in this case is Uber Britannia Ltd, a separate entity to all other incarnates of Uber. However, the "Uber Operation" locally in Brighton & Hove is patently not that simplistic and furthermore the "customer experience" or contract (from a customer's perspective) is we believe complicated, misleading and confusing.

Uber Britannia is not actually the same as the companies that deliver the Uber service and operation locally in Brighton & Hove. The word "companies" is key here.

Brighton & Hove Uber customers and users of the system that has been locally licensed by Brighton & Hove City Council don't realise that;

When they "request a ride" (in Uber's words) locally within the City of Brighton & Hove, then that "request" is handled by a "different" company based in the Netherlands called Uber BV. It is this "company" that forwards the "request" (not a booking I hasten to point out at this juncture). It is Uber BV that forwards the request for a driver to be dispatched to the user's location. It is also Uber BV who collects any payment required. At no point has the customer interacted or contracted with Uber Britannia Ltd (the company licensed by Brighton & Hove City Council)!

The supply of the vehicle is then handed by Uber BV to another company based in the UK, either Uber Britannia Ltd or indeed Uber London Ltd. However, there would seem to be a problem! As, the "request" or "booking" (as it is called in the UK) has already been accepted by a driver at this stage and before being handed by Uber BV to either Uber Britannia Ltd or indeed Uber London Ltd.

Therefore it runs that if we are to accept that each ("company") incarnate of Uber is separate, then Uber BV is operating without a "Private Hire Operator's Licence" or at the very least 'advertising for the acceptance of bookings', without a licence within the City of Brighton & Hove.

If conversely, we are to accept that all incarnates of Uber are in fact that, - Uber! Then we must accept that the customer contracts with Uber in its various guises and not specifically or individually with Uber Britannia Ltd. This does not however alter the fact that the initial "request for a ride" was/is accepted by a Private Hire driver who does not (in most cases) possess a Private Hire Operator's licence for the acceptance of Private Hire "bookings". The fact that the "booking" is documented to an Operator's Licence held by the various incarnates of "Uber" by virtue of 'back-filling' sometime later, does not we feel assist here.

The consequence of all this we believe, is that either;

All incarnates ("companies") are separate and Uber BV is acting unlawfully. If this is the case then this has clear ramifications upon the lawful nature of Uber Britannia's operation locally within Brighton & Hove.

or;

There is but one "Uber" albeit trading under different titles for their convenience. This belief is supported by the fact that the staff of all incarnates of Uber seem to be the same. i.e. Fred Jones as 'Head of Cities' is the "face" of Uber, Uber London Ltd and Uber Britannia. Therefore, we feel one could assume that Uber is Uber, is Uber.

Regardless, It can be argued that this setup (unlike other local licensed Operators, Radiocabs, Streamline, City Cabs) is so designed and deliberate. It is part of what has allowed Uber to blur the boundary between being a 'pre-booked' "Private Hire" service and 'plying-for-hire'.

The interesting fact here is that Uber Britannia is a locally licensed Brighton & Hove Private Hire Operator, yet it would seem that no passenger has ever called or contracted with them directly – they merely respond exclusively to requests forwarded by Uber BV, based in the Netherlands. Quite where Uber Global (based in San Francisco) fits into all of this legislatively speaking is quite frankly, anyone's guess.

In view of all of the foregoing, then clearly if we are to accept that Uber's operation in Brighton & Hove is lawful then there is but one Uber.

Consequently, any sanctions against, behaviour by any of its drivers (wherever they are licensed) or behaviour of Uber itself at large in any geographical area in the UK, must be considered when giving consideration as to whether to renew their Brighton & Hove Private Hire Operator's licence.

Transport for London (TfL)

On Friday 22nd of September 2017, Transport for London announced that they had concluded that Uber was 'not fit and proper' to hold a Private Hire Operator's licence. They cited the following as their basis for the decision to refuse to renew Uber's licence:

- Their approach to reporting serious criminal offences.
- Their approach to how medical certificates are obtained.
- Their approach to how Enhanced Disclosure and Barring Service (DBS) checks are obtained.
- Their 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. (We will return to 'Greyball' in detail later).

It is worth mentioning and noting separately here, the grave concerns of Police Inspector Neil Billany, who voiced them on behalf of the Metropolitan Police in a letter to the London regulator (TfL). We will also return to this in detail later.

It is also supremely worrying and what's more highly questionable that in Uber's appeal submission against the London Tribunal rulings on worker rights, they conceded that their drivers are indeed accepting journeys rather than Uber the "company". Uber have persistently claimed that they are, and have been operating within both the Local Government (Miscellaneous Provisions) Act 1976 and the Private Hire Vehicles (London) Act 1998. However, this admission of their practice would seem to breach both pieces of legislation.

It would also be remiss not to mention here, the subject of worker rights - if only in summary. The workers rights of drivers; frequently photographed sleeping in their vehicles on the streets of Brighton & Hove (photographic evidence available). Apart from the obvious danger(s) to Public Safety posed by this practice within the operation, it would tend to also cast doubt upon the financial viability (from a driver's perspective) of the Uber business model and suggest the requirement to work disproportionately long hours on their Private Hire Operation locally within Brighton & Hove in order to make a living. You perhaps do not need us to tell you that this constitutes a worrying practice. We know of no local drivers on local fleets who use their vehicle as a dormitory. This practice goes far beyond "taking a nap" with some vehicle having been fitted with "curtains" and blackout screens!

There is clearly a regulatory issue between TfL as the regulator and Uber as a Private Hire Operator and if there is an issue in London, then it follows that there is an issue of regulation or the infractions upon it, within Brighton & Hove as well. As the Uber Operation in Brighton & Hove utilises the same business model, the same software (App) and indeed in many cases the same drivers and vehicles, not to forget the same "Management Staff".

The primary purpose of the Taxi/Private Hire licensing is "Passenger Safety". The expected behaviour of a licensed Private Hire Operator should at the very least ensure that vehicles/drivers are adequately checked before they are allowed to subcontract to the company and if those checks have been found to be inadequate in London, then given that the same business model is in use by the same company in Brighton & Hove, then we believe it is safe to assume that the same inadequate checks may be in use locally by Uber. This should also be given serious consideration.

Any locally Licensed Private Hire Operator is also responsible for dealing with complaints from customers properly and passing these onto both the licensing regulator (in this case Brighton & Hove City Council) and the Police. We find the suggestion that there have been no customer complaints regarding Uber in Brighton (given the size and scope of their operation locally) surprising to say the very least and furthermore the Council's possible reliance on this to be dangerous in terms of complacency.

Metropolitan Police

On 12th of April 2017, Inspector Neil Billany wrote on behalf of the Metropolitan Police to TfL voicing major concerns, claiming that Uber had not and were not reporting serious incidents to the Police. From the letter, examples were given;

- An incident involving 'road rage', where an Uber driver had appeared to brandish a firearm, which turned out to be pepper spray. Whilst Uber dismissed the driver, they failed to report the incident to the police. When the Police finally found out and mounted an investigation, as indicated in the letter, Uber refused to provide more information unless a formal request via the Data Protection Act was submitted - we deem this not to be the actions of a 'Fit & Proper' Operator.

Two more serious offences were cited, narrative taken from the letter itself;

- '...The facts are that on the 30 January 2016 a female was sexually assaulted by an Uber driver. From what we can ascertain Uber have spoken to the driver who denied the offence. Uber have continued to employ the driver and have done nothing more. While Uber did not say they would contact the police the victim believed that they would inform the police on her behalf...'
- '...On the 10 May 2016 the same driver has committed a second more serious sexual assault against a different passenger Again Uber haven't said to this victim they would contact the police, but she was, to use her words, 'strongly under the impression' that they would...'
- '...On the 13 May 2016 Uber have finally acted and dismissed the driver, notifying LTPH [London Taxi and Private Hire] Licensing who have passed the information to the MPS (Metropolitan Police Service)...'

'...The second offence was more serious in its nature. Had Uber notified police after the first offence it would be right to assume that the second would have been prevented. It is also worth noting that once Uber supplied police with the victim's details both have welcomed us contacting them and have fully assisted with the prosecutions. Both cases were charged as sexual assaults and are at court next week for hearing.

Uber hold a position not to report crime on the basis that it may breach the rights of the passenger. When asked what the position would be in the hypothetical case of a driver who commits a serious sexual assault against a passenger they confirmed that they would dismiss the driver and report to TfL, but not inform the police...'

The letter went on to explain that these weren't the only incidents the Metropolitan Police Service had become aware of. In total, Uber had failed to report six sexual assaults, two public order offences and one of assault. This had led to delays of up to seven months before the Police could investigate. This is alarming, as in the case of the "Public Order" offences, in both cases the prosecution time limit had passed before the police became aware of them. Again, we deem this not to be the actions of a 'Fit & Proper' Operator.

Inspector Billany's letter concluded;

'...The significant concern I am raising is that Uber have been made aware of criminal activity and yet haven't informed the police. Uber are however proactive in reporting lower level document frauds to both the MPS and LTPH. My concern is twofold, firstly it seems they are deciding what to report (less serious matters / less damaging to reputation over serious offences) and secondly by not reporting to police promptly they are allowing situations to develop that clearly affect the safety and security of the public...'

Uber continually argues the overt safety of its operation both in London and elsewhere (including Brighton & Hove) and frequently uses public support as a weapon in any confrontations. These cases cited by Inspector Billany tend to display the reality of the effect of the Uber Operation on "Public Safety" behind all of Uber's 'marketing spin' and 'smoke and mirrors' both nationally and locally.

Data Breach

In November 2017, Brighton & Hove City Council was alerted to the subject of Uber's breach of data and the clear and serious adverse effect(s) upon "Passenger/Public Safety" locally as it would appear that once again this "Operator" had concealed or "forgotten to report" a serious and relevant issue to regulators (such as Brighton & Hove City Council).

It was widely reported that some 57 million account holders (customers) and some 600,000 driver details were stolen in 2016 and that this was only admitted by Uber in November 2017 - some one year later!

Wes Streeting MP made a speech in Parliament voicing his concern(s) and describing Uber as having, '...played fast & loose with safety...!'

On the basis of the tardy admission of the breach by Uber, we suggested that the question for anyone involved in 'Taxi/Private Hire Licensing' within the City of Brighton & Hove was clear;

We asked whether, '...anyone could say with any conscience, conviction or furthermore with any regard for Local Public or Passenger Safety, that they were still of the belief that Uber remained or was in any way a "Fit & Proper" company to be licensed as an "Operator", operating Licensed vehicles within the City of Brighton & Hove?

We suggested that the security breach was alarming enough in itself, but the fact that it seemed it had been knowingly and recklessly concealed by Uber from licensing regulators (including Brighton & Hove City Council) was surely sufficient grounds for the immediate "Revocation" of their licence on the basis of dishonesty and withholding information!

We also noted that not only was this serious breach in 2016 **NOT** revealed to the General Public or Licensing Regulators (including Brighton & Hove City Council) until one year later, it was also revealed it appears that Uber had paid a financial "ransom" of some description to the hackers, in order to keep this matter "quiet" and away from the "eyes & ears" of the General Public and Licensing Regulators. We suggested that the further revelation that Japanese tech investor "SoftBank" seemingly being told about Uber's data hack before anyone affected by it was equally shocking, what's more concerning and seemed to point to a blatant disregard for the safety or security of the General Public.

We questioned whether these were the actions of a "Responsible Licensed Operator"???

Despite our assertions and alerts, Brighton & Hove City Council chose to take no action. However, York City Council did, at Uber's next Operator's licence renewal!

In December 2017, York City Council refused to renew the Uber's Operator's Licence based on the 'Data Breach' and its affect on local York based users of the Uber App.

York City Council concluded that Uber's failure to act in a responsible manner amounted to Uber not being 'Fit and Proper' to hold a York Operator's Licence.

Gerald Gouriet QC, a prominent Licensing lawyer described York City Council's process of the Uber Operator Licence Refusal thus;

'...

After deliberating in open session, York's Regulatory and Licensing Committee refused (by majority) to renew UBL's York PHV operator's licence under section 62(1)(b) LGMPA 1976, namely "conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence." The committee's reasons may be summarised –

The failure by Uber to inform the relevant authorities until November 2017 of a serious data breach that occurred in 2016 (and which affected York users of the Uber App) rendered UBL unfit to hold a PHV operator's licence.

...'

We note that York City Council reached their decision, '**After deliberating in open session**...!' Something Brighton & Hove City Council (Councillor O'Quinn) has led us and local MPs to believe is unlawful through its 'sacrosanct' nature! Were York mislead here in terms of legal process and advice or has Brighton & Hove been misled, one wonders...???

Uber withdrew their appeal against the refusal by York City Council to renew their Operator's licence in March 2018. The question for any reasonably minded individual here is merely Why, if they considered the decision to be in some way flawed or wrong???

Greyball

Another of TfL's concerns surrounds the use of 'Greyball'.

'Greyball' is a tagging system within the Uber app. Where a user who has been 'greyballed' opens up the app and rather than being shown a realistic view of the local area and Uber vehicles, the app shows them a custom Uber map instead. 'Greyball' also allows nearby drivers to be alerted to the presence of a 'greyballed' user, or for those users to be hidden from drivers as well. 'Greyball' was the subject of an investigation by the New York Times into Uber's activities in 2014. The paper claimed that Uber, knowing that they were breaking the regulations on taxi operation in the city, had accessed user data within the app and elsewhere to identify likely "Officials" and target them with false information. This ensured that those individuals were not picked up for 'rides' and hampering attempts by the authorities to police Uber's activities.

Initially, Uber denied the accusations. They confirmed that 'Greyball' existed, but insisted that it was only used for promotional purposes, testing and to protect drivers in countries where there was a risk of physical assault.

The seriousness of the allegations and the evidence presented by the New York Times prompted Portland's Board of Transport (PBOT) to launch an official investigation into Uber's activities (<https://www.portlandoregon.gov/saltzman/article/637492>). It was made public at the beginning of September. In it, Portland published evidence – and an admission from Uber itself – that during the period in which it had been illegal for Uber to operate in Portland, they had indeed used it to help drivers avoid taxi inspectors. In Portland's own words:

'...Based on this analysis, PBOT has found that when Uber illegally entered the Portland market in December 2014, the company tagged 17 individual rider accounts, 16 of which have been identified as government officials using its 'Greyball' software tool. Uber used 'Greyball' software to intentionally evade PBOT's officers from December 5 to December 19, 2014 and deny 29 separate ride requests by PBOT enforcement officers...'

The report did confirm that, after regulatory changes allowed Uber to enter the market legally, there seemed to be no evidence that 'Greyball' had been used for this purpose again.

However, as the report states;

'...[i]t is important to note that finding no evidence of the use of 'Greyball' or similar software tools after April 2015 does not prove definitively that such tools were not used. It is inherently difficult to prove a negative. In using 'Greyball', Uber has sullied its own reputation and cast a cloud over the TNC [transportation network company] industry generally. The use of 'Greyball' has only strengthened PBOT's resolve to operate a robust and effective system of protections for Portland's TNC customers...'

Portland also canvassed other transport authorities throughout the US asking whether, in light of the discovery of 'Greyball', they now felt they had evidence or suspicions that they had been targeted in a similar way.

Their conclusions were as follows:

PBOT asked these agencies if they have ever suspected TNCs of using 'Greyball' or any other software programs to block, delay or deter regulators from performing official functions. 7 of the 17 agencies surveyed suspected 'Greyball' use, while four agencies stated that they have evidence of such tactics. One agency reported that they only have anecdotal evidence, but felt that drivers took twice as long to show up for regulators during undercover inspections. The other agencies/cities believe that their enforcement teams and/or police officers have been blocked from or deceived by the application during enforcement efforts.

Uber are now under investigation by the US Department of Justice for their use of 'Greyball' in the US.

Of all the transport regulators in Europe, TfL are arguably the most technically literate. So it is not surprising to see it included within the list of issues.

One would expect that TfL have requested significant assurances and guarantees that 'Greyball' will not be used in this way in London. The fact that it is still included within the list of issues, tends we believe to suggest however, that this demand has currently not been met.

To return to Uber's Operation locally within the City of Brighton & Hove. Uber applied to Brighton & Hove City Council for a Licence to Operate Private Hire vehicles in the City. During the initial application and associated **public enquiry**, representatives from Uber committed to an agreement with the local (Licensing) authority (Brighton & Hove City Council) through a clear understanding from Uber at a previous Council Licensing Panel Meeting on October 19th 2015, where Uber stated that they would ONLY use Brighton and Hove licensed vehicles and drivers to service bookings in Brighton & Hove. In effect, a firm commitment from Uber to comply with the provisions of the Council's "Blue Book" bible of licensing conditions designed to protect the Cab using public locally.

Words of assurance that have proved to mean anything but what they say! As we now know, within hours of Uber's launch, Brighton & Hove was saturated with out of area Private Hire Vehicles, predominantly licensed by Transport for London (TfL) and this situation has persisted and increased in number. The City has been saturated and littered on a daily (and nightly) basis with a flood of TfL 'Minicabs' being 'operated' by Uber. This together with a "liquorice all-sorts" style mixture of other Uber vehicles from all over the Country. They also undertook to address the supply of Wheelchair Assessable vehicles under the Uber operation, to date this has still not been done.

The legal infractions reported to your authority together with (in almost every case) photographic evidence include:

- Uber Private Hire vehicles parking and 'Plying For Hire' on Brighton & Hove "Taxi Ranks" seemingly without let or hindrance from either the City Council or Uber, who have allegedly 'Geo-Fenced' these same ranks.
- Uber drivers sleeping in their vehicles on the streets of Brighton & Hove. This in itself represents a worrying erosion of local safety standards.
- Uber vehicles driving the wrong way up and down one way streets.
- The unlawful use of bus lanes by Uber TfL vehicles.

- The unlawful creation of Private Hire 'pick up points'/unlawful Private Hire ranks.

Questions For the Licensing Panel (Which Require A Written Response)

We have set out below what we hope you will agree are some further pertinent questions for the City Council to answer fully, if need be in conjunction with Uber, before considering any application to renew its operator's licence:

1. If Uber has no involvement (as it has asserted previously) in the contract between the customer and the driver of the vehicle, who accepts the booking?
2. If Uber accepts the booking, how does it have no involvement in the contract between the customer and the driver?
3. If Uber considers that the driver accepts the booking (as it has asserted previously), does it accept that the driver must also hold a Private Hire Operator licence to accept bookings? If this is the case, what steps does Uber take to ensure that all bookings are only given to licensed operators? (Note - reference to "Uber" is to Uber BV (based in the Netherlands, being the company that customers and drivers enter into agreements with for use of its app platform).
4. Please kindly confirm whether you will be utilising external experts in the field of Taxi/Private hire despatch/booking technology and apps within your consideration of this licence renewal?
5. Has the Council engaged a forensic examination of the lawful nature of the operation of the Uber App and its compliance with the 1976 act?

6. Has the Council engaged specialist and **independent** legal advice on this renewal as we would suggest that the 'Uber Briefing Document for Officers and Members' supplied to the Licensing Panel for consideration and weighting at the last renewal and clearly authored by Simon Court (Solicitor - Brighton & Hove City Council) was a highly biased document, littered with factual inaccuracies, unsubstantiated subjective assertions and ill informed personal opinion. The trade were not given any opportunity to peruse, scrutinise, take issue with or disprove any inaccuracies of this document until after the decision (and then only by way of FOI) due to the "behind closed doors" nature of the deliberations! We consider that this fundamentally flawed the whole process of re-licensing and left it potentially "open to legal challenge" based on any possible weighting given by members to this document or its many assertions during the consideration, deliberation or decision making.

We respectfully ask that specialist and **fully independent** (of the Council) legal advice is sought and that if any such document is to be again considered then it should be offered to all for full open scrutiny and reasonable response prior to the Panel's consideration, deliberation or decision making!

We ask that all of the foregoing is considered as Unite the Union's formal objection to the renewal of Uber's Brighton & Hove Private Hire Operator's Licence. We therefore implore you as a responsible local licensing authority to refuse to renew Uber's Private Hire Operator's licence.

We are not 'anti-innovation' or anti competition, we merely ask that you consider 'Greyball', consider the Metropolitan Police's letter of concern and furthermore consider the actions required by or expected from a responsible licensed 'Private Hire Operator', specifically regarding the reporting of relevant events including 'Data Breaches'.

This is about holding Uber, as an Operator, to the same set of standards to which every other Private Hire Operator in Brighton & Hove already complies.

Sean Ridley
Secretary Unite the Union – South-East Region (Cab Section).